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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Clarke and Rebecca Wixon, Norman
and Barbara Wixon, and Kandice Scattolon, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Wyndham Resort Development Corp. (f/k/a
Trendwest Resorts, Inc.),

Defendant.

Case No. C 07-02361 JSW (BZ)

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF PROPOSED
SETTLEMENT BETWEEN
PLAINTIFFS AND DEFENDANT
WYNDHAM RESORT
DEVELOPMENT CORPORATION
AND MEMORANDUM IN SUPPORT
THEREOF**

CLASS ACTION

Date: August 5, 2011

Time: 9:00 a.m.

Before: Hon. Jeffrey S. White

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1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

2 PLEASE TAKE NOTICE that on **August 5, 2011, at 9:00 a.m.**, or as soon thereafter as
 3 counsel may be heard, Plaintiffs Clarke and Rebecca Wixon, Norman and Barbara Wixon, and
 4 Kandice Scattolon (collectively, "Plaintiffs") will move before the above-entitled Court for an order
 5 granting final approval of the Settlement Agreement and Release ("Settlement") (Dkt. No. 661,
 6 attached hereto as Exhibit 1) between Plaintiffs and Defendant Wyndham Resort Development
 7 Corporation ("Wyndham") (Plaintiffs and Wyndham are referred to collectively as the "Parties").

8 As described in the Parties' Joint Application for Preliminary Approval of Class Action
 9 Settlement (Dkt. No. 661), the proposed Settlement, a compromise of contested claims without
 10 admission of liability by Wyndham, includes changes to the WorldMark, The Club ("WorldMark")
 11 time-share plan that benefit WorldMark members by, *inter alia*: (i) reducing credit values at specified
 12 WorldMark resorts; (ii) making additional lower-credit value resort units available in the Anaheim,
 13 California area; (iii) removing certain underutilized units from the WorldMark system; (iv)
 14 eliminating the Fun Time element of Wyndham's TravelShare program in new TravelShare
 15 memberships; (v) limiting Wyndham's ability to use WorldMark resorts for its own marketing
 16 purposes; and (vi) cancelling up to 274.7 million credits that are now held by Wyndham as unsold
 17 developer credits, so that these credits will no longer be available for sale to the public or used by
 18 Wyndham in exercising a membership vote.

19 Wyndham has consulted with the WorldMark Board of Directors and relevant state and local
 20 regulators, and the Parties have provided notice to the Class in accordance with the Court's directives.
 21 By this motion, the Parties now respectfully ask the Court to grant final approval of the Settlement.
 22 This motion is based on the memorandum of points and authorities below, the Declarations of
 23 Jonathan K. Levine, David Herrick, Lance Blair and Plaintiffs in support of the Settlement, and such
 24 additional evidence or argument as may be required by the Court.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. SUMMARY OF ARGUMENT**

27 By this motion, Plaintiffs seek final resolution of class claims asserted against Wyndham under
 28 the terms of the Settlement that the Court preliminarily approved on December 3, 2010. (*See* Dkt. No.

668.) The Settlement addresses all of the principal issues complained of in the litigation and provides substantial benefits to all members of WorldMark.

In this litigation, Plaintiffs alleged that the credit values at certain new WorldMark resorts were set too high by Wyndham and resulted in Wyndham obtaining excess Vacation Credits that, when sold, would create undue strain on the WorldMark system. Wyndham has denied and expressly continues to deny any legal responsibility or liability to Plaintiffs, any WorldMark member, or WorldMark for any of the matters asserted in this action. The Parties agree, however, that the Settlement is desirable to avoid the time, expense, and inherent uncertainty of protracted class litigation, trial, and possible appeal, and to resolve, finally and completely, all pending and potential claims Plaintiffs asserted or could have asserted in this action against Wyndham.

On December 3, 2010, the Court granted the Parties' application for preliminary approval of the Settlement. In the following months, in accordance with the Court's directives, the Parties have provided notice of the Settlement to the Class and have provided notice to government officials required under the Class Action Fairness ("CAFA") Act, 28 U.S.C. § 1715(b). Wyndham has further consulted with the WorldMark Board of Directors and with state timeshare regulators whose approval is required for implementation of the Settlement and believes it has a good faith basis for forecasting that, using commercially reasonable efforts, it will be able to obtain such approvals.

Therefore, for the reasons set forth herein and in the Parties' prior submissions regarding the Settlement, Plaintiffs respectfully request that the Court grant final approval of the Settlement.

II. BACKGROUND

A. The Litigation

The Court is already well-acquainted with the procedural history of this case, which was summarized in the parties' Joint Application for Preliminary Settlement Approval and in the Levine Declaration. An abbreviated summary is provided below.

In April 2007, Plaintiffs commenced an action against Wyndham in California state court on behalf of certain members of WorldMark (*Wixon v. Wyndham Resort Development Corp.*, San Mateo Superior Court Case No. CIV461931). Wyndham removed the action to this Court under the Class Action Fairness Act ("CAFA") in May 2007. *See* Dkt. No. 1.

1 Plaintiffs alleged in the action against Wyndham, among other things, that it was violating the
 2 “Governing Documents” with respect to the pricing of certain new resorts, the operation and control of
 3 WorldMark’s “first-come, first-served” reservation system, and the number of weeks of usage sold at
 4 each new resort. The Governing Documents are the set of documents provided to WorldMark
 5 members when they join WorldMark, and they form a contract between Wyndham and WorldMark
 6 and its members. Plaintiffs asserted claims against Wyndham for breach of contract, breach of the
 7 implied covenant of good faith and fair dealing, violations of the California Unfair Competition Law
 8 and Vacation Ownership Time-Share Act, and declaratory relief.

9 In October 2007, Plaintiffs amended their complaint to assert derivative claims against the
 10 Director Defendants (Gene Hensley, David Herrick, John Henley, Peggy Fry and John McConnell) as
 11 additional defendants in the action. *See* Dkt. No. 40. Plaintiffs alleged that the Director Defendants
 12 breached their fiduciary duties to WorldMark and its members by actively assisting Wyndham in the
 13 conduct giving rise to the alleged breaches asserted against Wyndham.

14 Wyndham and the Director Defendants aggressively defended the case, filing four separate
 15 motions to dismiss. *See* Dkt. Nos. 46, 71, 123, 163. Plaintiffs ultimately survived these pleading
 16 challenges. When the pleading issues were resolved, the Parties devoted over five months to discovery
 17 related to Plaintiffs’ class certification motion and the Director Defendants’ adequacy motion under
 18 Rule 23.1 of the Federal Rules of Civil Procedure. *See* Dkt. Nos. 195, 202, 225, 240 and 241.

19 On October 19, 2009, after extensive briefing, accompanied by expert reports, and oral
 20 argument, the Court granted Plaintiffs’ motion for class certification and denied the Director
 21 Defendants’ adequacy motion under Rule 23.1. *See* Dkt. No. 420.

22 **B. Settlement Negotiations**

23 On November 11, 2009, the Parties attended a mediation session before the Hon. William J.
 24 Cahill (Ret’d) at JAMS in San Francisco, California. The Parties continued their settlement
 25 negotiations over the next seven months, while the litigation continued. Ultimately, on July 2, 2010,
 26 as a result of these vigorous negotiations, and several months after the close of fact and expert
 27 discovery, the Parties reached agreement in principle on the non-monetary claims asserted by Plaintiffs
 28 against Wyndham. On July 7, 2010, the Parties notified the Court that a proposed Settlement had been

1 reached and requested that all further litigation be suspended pending approval of the Settlement. *See*
 2 Dkt. No. 501.

3 After reaching agreement on non-monetary settlement terms, the Parties separately negotiated a
 4 monetary settlement amount to satisfy Class Counsel's claim for attorneys' fees, expenses and costs,
 5 subject to Court approval. The Parties actively negotiated the written terms of the Settlement from
 6 July 2, 2010 to October 18, 2010.

7 **C. Preliminary Approval and Wyndham's Consultation with Regulators**

8 Plaintiffs and Wyndham filed their joint application for preliminary approval of the Settlement
 9 on October 21, 2010. *See* Dkt. No. 661. The Court granted preliminary approval on December 3,
 10 2010. In the preliminary approval order, the Court: granted Plaintiffs' leave to file a Sixth Amended
 11 Complaint for purposes of the Settlement; certified a Settlement Class comprised of all current
 12 WorldMark members; directed the Parties to post a Summary Notice of the Settlement available to
 13 Class members on the internet; directed the parties to provide notice as required under CAFA, and
 14 directed the Parties to make a further report to the Court, especially with regard to Wyndham's
 15 progress in obtaining necessary approvals from state timeshare regulators. *See* Dkt. No. 668.

16 The Parties posted the Summary Notice, provided the notice required under CAFA and filed
 17 reports with the Court regarding the progress of state regulatory approvals on March 3 and April 18,
 18 2011. Wyndham represented that it believes it has a good faith basis for forecasting that, using
 19 commercially reasonable efforts, it will be able to obtain the necessary regulatory approvals. *See* Dkt.
 20 Nos. 673, 678, 679.

21 On April 19, 2011, the Court issued its order directing the Parties to disseminate Notice of
 22 Class Action Settlement to the Class in the form approved by the Court, scheduling a final approval
 23 hearing for August 8, 2011 and setting deadlines for the Parties' briefs and Class members' objections
 24 to the Settlement. *See* Dkt. No. 683. The Parties caused the Notice of Class Action Settlement to be
 25 disseminated to the Class on May 12, 2011, in accordance with the Court's order. *See* Declaration of
 26 Lance Blair Regarding Mailing of Class Notice, ¶ 4.

27 **D. Terms of the Proposed Settlement**

28 The terms of the Settlement were summarized in the Parties' joint submission on preliminary

1 approval. *See* Dkt. No. 661. As the Settlement has not been altered, the terms of the Settlement are
 2 summarized in a more abbreviated fashion below.

3 **1. Credit Cancellation and Reduction of Credit Values at Certain Resorts**

4 If the Settlement is approved, Wyndham will cancel 22 million WorldMark Vacation Credits
 5 that it currently holds as unsold developer credits. Cancelled Vacation Credits will no longer be
 6 available for sale, will not be sold, and cannot be used in connection with voting in any WorldMark
 7 election. The 22 million cancelled Vacation Credits will be allocated to reduce peak “red season”
 8 credit values in certain categories of units at certain of the resorts at issue in the lawsuit.

9 Additionally, as a result of this Settlement term, Wyndham’s rights and obligations as to the 22
 10 million Vacation Credits, including Wyndham’s voting rights in WorldMark elections, will be
 11 eliminated. Within fifteen (15) days of the Settlement’s Effective Date, or as soon as practicable
 12 thereafter, the WorldMark reservation system will be modified, and the new lower credit red season
 13 values at the affected resorts will be in place for stays at these resorts, so that members have the benefit
 14 of the new, lower credit values when they book reservations or stay at these resorts. *See* Ex. 1, at
 15 ¶¶ III.A.1-A.2.

16 **2. Extraction of Underutilized Units and Cancellation of Related Credits**

17 If the Settlement is approved, a minimum of 400 and up to a maximum of 481 units at certain
 18 underutilized WorldMark resorts will be returned to Wyndham. Underutilized units include only units
 19 at resorts with overall Vacation Credit occupancy rates below WorldMark’s 85% average rate. *See* Ex.
 20 1, at III.B.1. Based on a thorough review of occupancy and credit usage data, Plaintiffs and Wyndham
 21 agree that the extraction of these units will not materially impair availability at these resorts in which
 22 units are being extracted.

23 The Settlement contemplates that within twelve (12) months of the Effective Date, WorldMark
 24 will legally and effectively transfer to Wyndham or its assignee a minimum of 400 and up to a
 25 maximum of the 481 units identified above or, with the consent of Class Counsel, the WorldMark
 26 Board, and with Court approval, Wyndham will legally and effectively transfer certain substitute units
 27 (subject to the overall 481 unit maximum) that meet the criteria used to identify the units described
 28 above. The cancelled Vacation Credits will no longer be available for sale, will not be sold, and cannot

be used in connection with voting in any WorldMark election. *See* Ex. 1, at III.B.1-B.2(a), B.6.

3. Exchange of Certain Units in Anaheim to Provide More Availability at Lower Credit Values

If the Settlement is approved, at the time the First Transfer Phase described above is completed, 21 units at WorldMark Anaheim will be returned to Wyndham. These 21 units at WorldMark Anaheim will be replaced by additional weeks equivalent to 21 units at WorldMark's Dolphin's Cove Resort (also in Anaheim), which has lower credit values. Wyndham will cancel 7 million Vacation Credits associated with this exchange (16.9 million from WorldMark Anaheim less 9.9 million for WorldMark Dolphin's Cove) from its pool of unsold developer credits. The 7 million cancelled Vacation Credits will no longer be available for sale and will not be sold to any consumer as WorldMark Vacation Credits. Wyndham's rights and obligations as to the 7 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated. *See* Ex. 1, at III.C-D.

4. Aggregate Changes in Credits and Units and Reserves

If the Settlement is approved and implemented, the maximum net reduction in the number of Vacation Credits held by Wyndham for sale as WorldMark Vacation Credits will be 274.7 million, calculated as follows: 22 million cancelled + 262.5 million extracted – 9.86 million added at WorldMark Dolphin's Cove. *See* Ex. 1, at II.D.1 As a result of the Settlement, Wyndham's rights and obligations as to the 274.7 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated. (*See id.*) In addition, WorldMark owners would be relieved of maintenance and other costs associated with the extracted units, and the number of credits available to compete for reservations at WorldMark resorts will be reduced, at the same time ensuring that the number of units remaining after extraction will be sufficient to meet owner demand.

At the time units are transferred out of WorldMark, exterior reserves maintained for future refurbishment and repair at resorts where units are being returned to Wyndham will be transferred to, and held by, an independent association or governing body responsible for exterior maintenance at the resort. Interior reserves maintained for future refurbishment and repair of the units returned to Wyndham will be deposited with an escrow agent. *See* Ex. 1 at III.D.2.

5. Cessation of Sales of TravelShare with Fun Time

If the Settlement is approved, Wyndham will stop selling new TravelShare memberships

1 with Fun Time included on the later of October 31, 2011 or 90 days after the Settlement's Effective
 2 Date. Sales of new TravelShare memberships without Fun Time may continue after that date.
 3 WorldMark owners who join TravelShare prior to that date will not be affected by this aspect of the
 4 Settlement. *See* Ex. 1, at III.E.

5 **6. Election Website**

6 If the Settlement is approved, Wyndham will cooperate with WorldMark and establish a
 7 separate internet website for owners to access during election cycles for the purpose of, and with
 8 content pertaining to, WorldMark Board of Director election matters, subject to reasonable review and
 9 approval of any owner postings by the WorldMark Board or the Board's authorized designee.
 10 Wyndham will notify WorldMark owners of the website's existence each election cycle via
 11 Destinations Magazine and the Insider Magazine. *See* Ex. 1, at III.G.

12 **7. Limitations of Party Weekends**

13 If the Settlement is approved, Wyndham will not book Party Weekends at any specific
 14 WorldMark resort during any particular calendar month in which the occupancy at the resort has
 15 exceeded 90% based on occupancy data from the same month in the preceding calendar year. *See* Ex.
 16 1, at III.H.

17 **8. Release of Claims**

18 If the Settlement is approved, all WorldMark owners as the date of the Court's Preliminary
 19 Approval Order who do not exclude themselves from the Settlement will release all claims that have
 20 been or could have been alleged in the litigation or that arise out of, are connected with, or are related
 21 to the claims asserted in the litigation, including any unknown claims against Wyndham. Wyndham
 22 will similarly release all such claims against Plaintiffs and Plaintiffs' Counsel. *See* Ex. 1 at VII.B.

23 **9. Dismissal of Pending Litigation; Required Action if Settlement is Voided**

24 If the Settlement is approved, the Action will be dismissed, with prejudice, subject to the
 25 continuing jurisdiction of this Court. Additionally, the Wixon plaintiffs have dismissed with prejudice
 26 their complaint in intervention filed in the California state litigation involving a dispute as to the
 27 distribution of the owner register and owner email addresses, *WorldMark v. Miller*, Sacramento County
 28 Superior Court Case No. 34-2008-00025130-CU-PT-GDS, and withdrawn from the state litigation,

including any proceedings in any California appellate court. *See* Ex. 1, at VII.D.

10. Plaintiffs' Counsel's Fee and Expense Application

To date, Plaintiffs' Counsel have not been compensated for any of their work or reimbursed for any of the significant expenses incurred in the litigation. Subject to Court approval, Wyndham has agreed to pay a fee and expense award in an amount not to exceed \$5 million to compensate Plaintiffs' Counsel for the work they have performed for the Class, the litigation expenses incurred (including experts), and the costs associated with the notice and administration of the Settlement, together with any amounts paid to Plaintiffs as incentive awards. Also subject to Court approval, each of the named Plaintiffs may receive a \$5,000 incentive award to be paid out of the total amount of any fee award to Plaintiffs' Counsel. *See* Ex. 1 at V.1

Neither Plaintiffs, WorldMark, nor the Class will be responsible for the payment of any of Plaintiffs' Counsel's fees or expenses or the incentive awards. In addition, the Settlement is not contingent upon the Court's award of fees or expenses to Plaintiffs' Counsel or the incentive awards to the named plaintiffs. *See* Ex. 1 at V.1

III. ARGUMENT

A. Overview of the Class Action Settlement Process

A class action settlement like the one proposed here must be approved by the Court to be effective. *See* Fed. R. Civ. P. 23(e). The court approval process has three principal steps:

1. A preliminary approval hearing, at which the court considers whether the proposed settlement is within the range of reasonableness possibly meriting final approval;
2. Class members are notified of the proposed settlement and given an opportunity to express any objections;
3. A "formal fairness hearing," or final approval hearing, at which the Court decides whether the proposed settlement should be approved as fair, adequate, and reasonable to the class.

See Manual For Complex Litigation (4th Ed.) §§ 21.632-34 (2004).

The first two steps have been completed. The Court granted the motion for preliminary approval of the proposed settlement, and the Parties have notified Class members of the proposed

1 settlement and fairness hearing. *See* Dkt. No. 668; Levine Decl., ¶ 41. Plaintiffs now ask that the
 2 Court grant final approval of the proposed Settlement.

3 **B. The Court Should Grant Final Approval of the Proposed Settlement**

4 A proposed class action settlement may be approved if the Court, after allowing absent class
 5 members an opportunity to be heard, finds that the settlement is “fair, reasonable, and adequate.” Fed.
 6 R. Civ. P. 23(e)(2). In making this determination, “the court’s intrusion upon what is otherwise a
 7 private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent
 8 necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
 9 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
 10 reasonable and adequate to all concerned.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th
 11 Cir. 2009) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). *See also Officers*
 12 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982) (“[V]oluntary conciliation and
 13 settlement are the preferred means of dispute resolution. This is especially true in complex class action
 14 litigation . . .”).

15 The decision of whether to approve the parties’ proposed settlement is committed to the sound
 16 discretion of the trial judge, and will not be overturned except upon a strong showing of a clear abuse
 17 of discretion. *Hanlon*, 150 F.3d at 1026-27. In considering the fairness, reasonableness and adequacy
 18 of a settlement, a district court is to consider the settlement as whole, rather than its component parts.
 19 The Ninth Circuit has set forth a list of non-exclusive factors that a district court should balance in
 20 deciding whether to grant final approval, namely:

- 21 1. The strength of plaintiffs’ case;
- 22 2. The risk, expense, complexity, and likely duration of further litigation;
- 23 3. The risk of maintaining class action status throughout the trial;
- 24 4. The relief offered in settlement;
- 25 5. The extent of discovery completed, and the stage of the proceedings;
- 26 6. The experience and views of counsel;
- 27 7. The presence of a governmental participant; and
- 28 8. The reaction of the class members to the proposed settlement.

1 *Id.* at 963 (referred to hereafter as the “*Hanlon* factors”). *See also Perez v. Tilton*, No. C 05-05241
 2 JSW, 2006 U.S. Dist. LEXIS 63318, at *6-11 (N.D. Cal. Aug. 21, 2006) (White, J.) (applying *Hanlon*
 3 factors and approving settlement).

4 The first four *Hanlon* factors are designed to assist the Court in comparing the compromise with
 5 the likely rewards of litigation. By evaluating the strength of the Plaintiffs’ case; the risk, expense,
 6 complexity, and delay associated with further proceedings; and the risk of maintaining class
 7 certification through trial, the Court can get a good idea of the value of class members’ claims. The
 8 Court can then evaluate the amount offered by the parties’ proposed settlement in context to determine
 9 whether it provides fair compensation for those claims — or, stated another way, “whether the interests
 10 of the class are better served by the settlement than by further litigation.” *Manual For Complex*
 11 *Litigation* (4th Ed.) § 21.61 (2004); *see also generally In re TD Ameritrade Accountholder Litig.*, 266
 12 F.R.D. 418, 422 (N.D. Cal. 2009) (Walker, J.) (quoting *Protective Committee for Independent*
 13 *Stockholders of TMT Trailer Ferry Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968): “Basic to [the
 14 process of deciding whether a proposed settlement is fair, reasonable and adequate] . . . is the need to
 15 compare the terms of the compromise with the likely rewards of litigation.”).

16 The remaining *Hanlon* factors offer additional perspective on whether the amount offered by the
 17 settlement is fair — ensuring that the parties and the Court have sufficient information to intelligently
 18 assess the value of class members’ claims, taking into account class counsel’s and individual class
 19 members’ opinions about the settlement and accounting for the position or views of any governmental
 20 participant.

21 An evaluation of the *Hanlon* factors in this case shows that the proposed settlement provides
 22 substantial benefit to class members without the risk and delay associated with further litigation, and
 23 should be approved as a fair, adequate, and reasonable resolution of the claims against Wyndham.

24 **1. The Strength of Plaintiffs’ Case, Risk and Expense of Further Litigation** 25 **and Risk of Maintaining Class Action Status**

26 While every step of the litigation has been hard-fought, Plaintiffs have achieved every litigation
 27 objective they set out to achieve. The complaint has survived multiple motions to dismiss — one filed
 28 by Wyndham and three filed by the Director Defendants. After extensive briefing and class
 certification expert discovery, the Court granted Plaintiffs’ motion for class certification.

1 Nonetheless, it was by no means certain that Plaintiffs would prevail on their claims. For
 2 example, in order to prevail on their claims challenging Fun Time TravelShare reservations, Plaintiffs
 3 would have had to have proven damages or injury. *See, e.g., Wall Street Network, Ltd. v. New York*
 4 *Times Co.*, 164 Cal. App. 4th 1171, 1178 (Cal. App. 2d Dist. 2008) (“damage to plaintiff” is an element
 5 of a breach of contract claim); *Branick v. Downey Savings & Loan Assn.*, 39 Cal. 4th 235, 240 (2006)
 6 (“injury in fact” is required to maintain a claim under the California Unfair Competition Law). In other
 7 words, in order to succeed on their claims, Plaintiffs likely would have had to have proven that Fun
 8 Time reservations caused actual harm to WorldMark members, not merely that such reservations
 9 potentially could cause harm. The data available to prove damages or injury to WorldMark owners as a
 10 group — primarily, vacation timeshare usage and resale price data — are limited and open to different
 11 interpretations. Therefore, a decision on the TravelShare and Fun Time claims likely would have come
 12 down to the jury’s assessment of each side’s expert’s analysis of the data, making the outcome
 13 particularly uncertain and difficult to predict. *See generally Cagan v. Anchor Sav. Bank FSB*, No. CV-
 14 88-3024, 1990 U.S. Dist. LEXIS 11450, at *24 (E.D.N.Y. May 17, 1990) (“Where . . . a battle of the
 15 experts takes place, it is difficult to predict how a jury would respond.”). The jury could well have
 16 found Wyndham’s expert to be more persuasive.

17 Plaintiffs’ claims challenging Wyndham’s deviation from relative use values also involved
 18 significant hurdles and uncertainties. Plaintiffs are aware of no decision by any court construing the
 19 term “relative use values” in the context of vacation timeshares. Therefore, the meaning of the term as
 20 it is used in the Governing Documents is open to some argument. Plaintiffs might not have been able
 21 to persuade the Court that their interpretation of the relative use value provision in the Governing
 22 Documents is the correct one. The fact also remains that, even before Wyndham’s involvement in
 23 WorldMark, different WorldMark resorts have had different credit values assigned to them. The fact of
 24 these differences in credit value assignments could also affect the interpretation of “relative use values”
 25 as it is used in the Governing Documents and, thereby, the viability of Plaintiffs’ claims. *See generally*
 26 *Stahly v. Salomon Smith Barney, Inc.*, 319 Fed. Appx. 654, 656 (9th Cir. 2009) (parties’ course of
 27 conduct in implementing a contract may influence the interpretation of the contract). In short, victory
 28 on Plaintiffs’ claims was by no means assured.

1 If the Parties had been unable to resolve this case through settlement, further litigation would
 2 have been expensive and lengthy. Wyndham almost certainly would have moved for summary
 3 judgment. Opposing such a motion and litigating this case at trial and subsequent appeals would
 4 involve unavoidable risks and expense, especially in light of the extensive use of experts in this case.
 5 *See, e.g., Hartless v. Clorox Co.*, No. 06cv2705-CAB, 2011 U.S. Dist. LEXIS 5427, at *21-22 (S.D.
 6 Cal. Jan. 20, 2011) (granting final approval and noting inherent risk and expense of further motion
 7 practice and expert involvement); *Rodriguez*, 563 F.3d at 966 (delay posed by anticipated summary
 8 judgment motion and appeal weighed in favor of settlement).

9 Wyndham would likely have continued to oppose class certification if the case were to proceed
 10 on the merits. While Plaintiffs would have opposed any efforts to decertify the class, the risk
 11 associated with maintaining class action status by itself favors final approval of the proposed
 12 Settlement. *See Lane v. Facebook, Inc.*, No. C 08-3845 RS, 2010 U.S. Dist. LEXIS 24762, at *17
 13 (N.D. Cal. Mar. 17, 2010) (Seeborg, J.) (citing *Rodriguez*, 563 F.3d at 966: “The risk that a class action
 14 may be decertified at any time generally weighs in favor of approving a settlement.”). Thus, the first
 15 three *Hanlon* factors favor final approval of the Settlement.

16 **2. The Relief Offered in Settlement**

17 As detailed above and in the Parties’ joint application for preliminary approval, the Settlement,
 18 if approved, will provide substantial benefits to members of the proposed Class. The Settlement will
 19 reduce peak season credit values at specified resorts and make them more affordable for WorldMark
 20 members. It will also exchange certain high credit value units for an equal number of lower credit
 21 value units in one popular resort area, Anaheim, California, thereby providing the same availability of
 22 WorldMark units to members, but at lower credit values, again making stays in the Anaheim area more
 23 affordable for WorldMark members.

24 Under the Settlement, a minimum of 400 and up to a maximum of 481 units at specified
 25 underutilized WorldMark resorts will be returned to Wyndham and, in exchange, Wyndham will
 26 surrender up to 274.7 million Vacation Credits that it now owns. This provision “right-sizes” the
 27 resorts by eliminating units that WorldMark members underutilize and relieving WorldMark of the
 28 expense and ongoing burden of maintaining units that are being underutilized. In this way, the

Settlement also accomplishes two goals of the litigation, namely: (1) reducing Wyndham's ability to influence WorldMark elections (by reducing Wyndham's voting power); and (2) eliminating most of the excess Vacation Credits that Plaintiffs allege were created by Wyndham's conduct. If the full 274.7 million Vacation Credits are surrendered by Wyndham, this will reduce Wyndham's voting power by 70%, based on the total number of Vacation Credits (390,465,786) that Wyndham presently owns. See Declaration of David Herrick in Support of Proposed Settlement Between Plaintiffs and Wyndham Resort Development Corp. at ¶ 6.

The Settlement also addresses the Fun Time element of Wyndham's TravelShare program and Wyndham's ability to use WorldMark resorts for its own marketing purposes in what are known as Party Weekends. Under the Settlement, Wyndham will stop selling new TravelShare memberships with Fun Time included, and will not book Party Weekends at any WorldMark resort during a calendar month in which occupancy has exceeded 90% in the same month in the preceding year. Accordingly, the fourth *Hanlon* factor weighs in favor of final approval of the Settlement.

3. The Extent of Discovery Completed and Stage of the Proceedings and the Experience and Views of Counsel

As described above, this litigation has been the subject of extensive discovery. Class Counsel have reviewed hundreds of thousands of pages of documents and conducted 15 substantive depositions of Wyndham executives in Seattle, Washington, Orlando, Florida, New York, New York and Salem, Oregon and thereby has had sufficient information to evaluate the strengths and weaknesses of the claims intelligently. *Rodriguez*, 563 F.3d at 967. On the basis of this information, Class Counsel believe that the Settlement is fair, reasonable and adequate and readily satisfies the requirements of Rule 23(e). Moreover, where, as here, Class Counsel have substantial relevant experience,¹ the recommendation of experienced counsel weighs in favor of approving the Settlement. See *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (Conti, J.) ("The recommendations of plaintiffs' counsel should be given a presumption of reasonableness."). These fifth and sixth *Hanlon* factors also favor final approval.

¹ The qualifications and experience of Class Counsel in the area of complex consumer class litigation are detailed in the firm resume submitted in support of Plaintiffs' class certification motion. See Dkt. No. 258, Ex. 24.

1 **4. The Presence of Governmental Participants**

2 As stated above, Wyndham has consulted extensively with state timeshare regulators regarding
3 approvals required for implementation of the Settlement and believes that all such approvals will be
4 obtained. Thus, the seventh *Hanlon* factor favors settlement as well. *Cf. Lane*, 2010 U.S. Dist. LEXIS
5 24762, at *19-20 (considering lack of opposition by regulators in decision to grant final approval);
6 *Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 U.S. Dist. LEXIS 86266, at * 36-37 (N.D. Cal.
7 Nov. 16, 2007) (Lloyd, Mag. J.) (same).

8 **5. The Reaction of the Class Members to the Proposed Settlement.**

9 As described above, notice was sent to members of the Class on May 12, 2011. Pursuant to the
10 Court's April 19, 2011 order, the deadline for Class members to file comments and objections
11 regarding the Settlement is July 8, 2011. The Parties will address any issues raised by Class members
12 in the Parties' reply in support of final approval, which is to be filed on July 22, 2011. *See* Dkt. No.
13 683.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Plaintiffs request that the Court grant final approval of the proposed
16 Settlement.

17 Dated: June 6, 2011

Respectfully submitted,

GIRARD GIBBS LLP

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Jonathan K. Levine

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*Attorneys for the Class and Plaintiffs Clarke and Rebecca
Wixon, Norman and Barbara Wixon, and Kandice
Scattolon*

CERTIFICATE OF SERVICE

I, Jonathan K. Levine, hereby certify that on June 6, 2011, I filed the following document(s):

**PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT
BETWEEN PLAINTIFFS AND DEFENDANT WYNDHAM RESORT DEVELOPMENT
CORPORATION AND MEMORANDUM IN SUPPORT THEREOF**

By ECF (Electronic Case Filing): I e-filed the above-detailed document utilizing the United States District Court, Northern District of California's mandated ECF service on June 6, 2011. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document(s) upon confirmation of e-filing.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, CA on June 6, 2011.

/s/ Jonathan K. Levine
Jonathan K. Levine

EXHIBIT 1

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
ATLANTA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CLARKE and REBECCA WIXON,
NORMAN and BARBARA WIXON, and
KANDICE SCATTOLON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

WYNDHAM RESORT DEVELOPMENT
CORP. (f/k/a Trendwest Resorts, Inc.),

Defendant.

Case No. C 07-02361 JSW

**SETTLEMENT AGREEMENT
AND RELEASE**

CLASS ACTION

Before: Hon. Jeffrey S. White

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B	Preliminary Approval Order	I.(p); II.1.a
C	Summary Notice	I.(x); IV.1.a., b.
D	Credits to be cancelled at Disputed Resorts	III.A.
E	Units to be extracted and exchanged, and Credits cancelled at WorldMark resorts	III.B., C.

1
2 Plaintiffs Clarke and Rebecca Wixon, Norman and Barbara Wixon, Kandice Scattolon,
3 and the Settlement Class (collectively, "Plaintiffs") and Defendant Wyndham Resort
4 Development Corporation ("Wyndham") (Plaintiffs and Wyndham are collectively referred to
5 herein as "the Parties"), by and through their counsel, hereby enter into this Settlement
6 Agreement and Release ("Settlement Agreement"), subject to Court approval, providing for the
7 terms of the Parties' settlement (the "Settlement") and the releases set forth herein.
8

9 **RECITALS**

10 WHEREAS, Plaintiffs Clarke and Rebecca Wixon and Norman and Barbara Wixon
11 filed the above-captioned litigation (the "Action") against Wyndham in the Superior Court of
12 California, San Mateo County, on April 2, 2007 (*Wixon v. Wyndham Resort Development*
13 *Corp.*, San Mateo Superior Court, Case No. CIV461931), which Wyndham removed to the
14 United States District Court for the Northern District of California (the "Court") on May 1,
15 2007, Case No. C-07-2361-JSW.
16

17 WHEREAS, on October 23, 2007, Plaintiffs Clarke and Rebecca Wixon and Norman
18 and Barbara Wixon filed their First Amended Complaint, asserting claims against Wyndham on
19 behalf of a class of persons who own WorldMark, The Club ("WorldMark") Vacation Credits
20 and who reside in or purchased their Vacation Credits in California, for breach of contract,
21 breach of the covenant of good faith and fair dealing, violation of California Civil Code § 1750
22 *et seq.* ("CLRA"), violation of California Business and Professions Code § 17200 *et seq.*
23 ("UCL"), violation of California Business and Professions Code § 11210 *et seq.* ("VOTSA"),
24 and declaratory relief; and adding as defendants Gene Hensley, David Herrick, John Henley,
25 Peggy Fry, and John McConnell, in their capacities as current and former members of the
26 Board of Directors of WorldMark, the Club ("Director Defendants"), and asserting against
27 them claims for breach of fiduciary duty and declaratory relief.
28

1
2 WHEREAS, on April 18, 2008, the Court denied in part and granted in part Wyndham's
3 motion to dismiss, finding that Plaintiffs' claims asserted against Wyndham were direct rather
4 than derivative in nature, but granting dismissal as to Plaintiffs' CLRA claim.

5 WHEREAS, on May 16, 2008, Plaintiffs Clarke and Rebecca Wixon and Norman and
6 Barbara Wixon filed their Second Amended Complaint, reasserting their class claims against
7 Wyndham, and asserting against Director Defendants on behalf of Plaintiffs and nominal
8 Defendant WorldMark derivative claims for breach of fiduciary duty and declaratory relief.
9 Plaintiffs sought monetary damages, as well as injunctive and declaratory relief.
10

11 WHEREAS, the Court, on July 23, 2008, granted Plaintiffs leave to file a Third
12 Amended Complaint. Plaintiffs associated with the law firm of Gersh & Helfrich, LLP, and
13 filed a Third Amended Complaint, which on November 3, 2009, in response to Director
14 Defendants' motion to dismiss, the Court found alleged derivative claims with the requisite
15 specificity.
16

17 WHEREAS, on April 24, 2009, Plaintiffs Clarke and Rebecca Wixon and Norman and
18 Barbara Wixon filed a motion for class certification with respect to the claims asserted against
19 Wyndham and a motion for leave to file a Fourth Amended Complaint to amend the class
20 definition.
21

22 WHEREAS, on October 19, 2009, the Court granted Plaintiffs' motion for leave to file
23 a Fourth Amended Complaint and granted in part their motion for class certification with
24 respect to the class claims asserted against Wyndham. The Court certified the following class,
25 pursuant to Fed. R. Civ. P. 23(b)(3):

26 All Current WorldMark, The Club members who purchased WorldMark Premier
27 Vacation Credits before November 5, 2006 and who (A) reside in the State of
28 California or who purchased Vacation Credits in California; and (B) did not enroll
in the TravelShare program at any time. Excluded from the Class are Defendants,
any entity in which any Defendant has or had a controlling interest, any officers
or directors of Wyndham, the legal representatives, heirs, successors, and assigns

1
2 of Defendants, and any judge assigned to this action and his or her immediate
3 family. (Dkt. No. 420.)

4 WHEREAS, on January 27, 2010, the Court granted Plaintiffs' motion to file a Fifth
5 Amended Complaint to add Plaintiff Kandice Scattolon, which Plaintiffs filed on February 3,
6 2010 (Dkt. No. 455).

7 WHEREAS, Plaintiffs intend to seek leave of Court to file a Sixth Amended Complaint
8 in connection with, and solely for purposes of, the Parties' Settlement to conform the class
9 definition to the definition of Settlement Class herein.

10 WHEREAS, discovery between Plaintiffs and Wyndham commenced in July 2007 and
11 concluded in June 2010.

12 WHEREAS, the Parties have explored and discussed at length the factual and legal
13 issues in the Action. These discussions were informed by substantial fact discovery, expert
14 discovery and analysis, and the Parties' investigation of the law and facts applicable to the
15 claims asserted against Wyndham and relevant defenses and the ability of the Action to proceed
16 as a class action.

17 WHEREAS, on November 11, 2009, the Parties initiated settlement discussions in a
18 full-day mediation session before the Honorable William J. Cahill (Ret'd) at JAMS in San
19 Francisco, California. Subsequently, the Parties commenced settlement discussions without the
20 assistance of a neutral, and since January 2010 have actively negotiated settlement while
21 litigating the Action.

22 WHEREAS, on July 2, 2010, as a result of the vigorous negotiations described above,
23 the Parties reached agreement in principle on settlement of the individual and class claims
24 asserted by Plaintiffs against Wyndham, subject to Court approval.

25 WHEREAS, Plaintiffs, by and through their undersigned counsel, have: (a) made a
26 thorough investigation of the facts and circumstances surrounding the allegations asserted in
27
28

1
2 the Action; and (b) engaged in investigation and discovery of the claims asserted in the Action,
3 including but not limited to: (i) researching, reviewing, and analyzing the applicable contracts
4 and documents that govern the Parties' legal rights, duties, and obligations *vis a vis* one
5 another; (ii) deposing witnesses and experts; (iii) reviewing and analyzing thousands of pages
6 of paper and e-discovery documents produced in the Action; (iv) engaging in discovery motion
7 practice before United States Magistrate Judge Bernard Zimmerman; and (v) investigating the
8 law applicable to the claims and defenses asserted in the Action.
9

10 WHEREAS, Wyndham believes Plaintiffs' claims have no merit. Wyndham has denied
11 and expressly continues to deny any legal responsibility or liability to Plaintiffs, any
12 WorldMark Member, or WorldMark for any of the matters asserted in the Action, but believes
13 settlement is desirable to avoid the time, expense, and inherent uncertainty of defending
14 protracted class litigation and to resolve, finally and completely, all pending and potential
15 claims Plaintiffs asserted or could have asserted in the Action against Wyndham.
16

17 WHEREAS, while Plaintiffs' counsel are experienced in this type of litigation and
18 believe that Plaintiffs' claims have merit, they also recognize the costs and risks of continued
19 prosecution of the Action, and believe it is in the interests of Plaintiffs and all WorldMark
20 Members to resolve the Action, as well as Plaintiffs' claims against Wyndham arising from the
21 conduct or actions alleged in or stemming from the Action, and they support this Settlement
22 Agreement.
23

24 WHEREAS, extensive arms-length negotiations resulted in this Settlement Agreement,
25 subject to Court approval.

26 WHEREAS, the undersigned Parties submit this Settlement Agreement to benefit
27 Plaintiffs and WorldMark Members, and believe it is fair, reasonable, adequate, and in the best
28 interest of Plaintiffs and WorldMark Members.

1
2 WHEREAS, this Settlement Agreement is intended to supersede any and all agreements
3 previously executed by the Parties with respect to claims asserted in the Action.

4 NOW, THEREFORE, it is hereby stipulated and agreed, by and between the
5 undersigned parties, as follows:

6 **I. DEFINITIONS.**

7
8 As used in this Settlement Agreement, the following terms have the corresponding
9 meanings set forth below. Where appropriate, terms used in the singular shall be deemed to
10 include the plural and vice versa.

11 (a) "Action" means and refers only to the individual and class claims asserted by
12 Plaintiffs against Wyndham in *Wixon v. Wyndham Resort Development Corp.*, Case No. C-07-
13 2361-JSW (N.D. Cal.).

14 (b) "Approval Hearing" means a hearing to be held by the Court to determine
15 whether the settlement should be approved and the Action dismissed.

16 (c) "Approval Order" means a final order and judgment entered by the Court,
17 which, among other things, grants final approval of the Settlement, dismisses with prejudice the
18 Action as to Wyndham, and deems the Parties' claims released as set forth in this Agreement.

19 (d) "CAFA Notice" means notice, in substantially the form attached hereto as
20 **Exhibit A**, to the appropriate authorities under the Class Action Fairness Act ("CAFA"), 28
21 U.S.C. § 1715(b).

22 (e) "Class Counsel" means Girard Gibbs LLP and its attorneys of record in the
23 action.

24 (f) "Class Representatives" means Clarke and Rebecca Wixon, Norman and
25 Barbara Wixon, and Kandice Scattolon.

26 (g) "Disputed Resorts" means the following twelve WorldMark resorts: Anaheim,
27
28

1
2 Canmore, Camlin, Las Vegas – Tropicana, Long Beach, Mission Valley, New Orleans, San
3 Diego, San Francisco, Santa Fe, Taos, and West Yellowstone.

4 (h) “Effective Date” means the last date by which the Approval Order has been
5 entered and the time for seeking appellate review of any and all matters related to the Action
6 and the Parties’ Settlement has expired or, if appellate review is sought, the Settlement has been
7 affirmed in its entirety by the court of last resort and such affirmance has become no longer
8 subject to further appeal or review.
9

10 (i) “Fee Award” means a fee award to be approved by the Court in an amount not to
11 exceed five million dollars (\$5,000,000), which shall include any representative awards and
12 Plaintiffs’ Counsels’ attorneys’ fees and expenses, including Plaintiffs’ expert witness fees and
13 other investigative or litigation expenses incurred by Plaintiffs, and settlement administration
14 fees and expenses, including Settlement-Related Expenses as defined herein.
15

16 (j) “Final Approval” means the date upon which the Court enters the Approval
17 Order.

18 (k) “Member” or “Membership” means a member of WorldMark, The Club, as
19 defined by WorldMark’s By-Laws, § 3, and documents incorporated therein.

20 (l) “Notice Order” means a Court order approving the form of Settlement Notice to
21 be given to the Settlement Class, directing that Settlement Notice be given to the Settlement
22 Class in a manner consistent with the notice provisions set forth in this Settlement Agreement, and
23 setting a schedule up to and including the Approval Hearing.
24

25 (m) “Plaintiffs” means Class Representatives Clarke and Rebecca Wixon, Norman
26 and Barbara Wixon, and Kandice Scattolon, and all Settlement Class members.

27 (n) “Plaintiffs’ Counsel” means Plaintiffs’ attorneys of record in the Action, *i.e.*, the
28 law firms of Girard Gibbs LLP, Gersh & Helfrich, LLP, or either of them.

1
2 (o) “Preliminary Approval” means the date upon which the Court enters the
3 Preliminary Approval Order.

4 (p) “Preliminary Approval Order” means a Court order, in substantially the form
5 attached hereto as **Exhibit B**, granting Plaintiffs leave to file a Sixth Amended Complaint,
6 preliminarily certifying the Settlement Class for the sole purpose of this Settlement,
7 preliminarily approving the Settlement, approving the form and internet posting of the
8 Summary Notice, directing that CAFA Notice be given, and setting a date for the Parties to
9 submit a joint report and a proposed form of Settlement Notice and a schedule leading up to
10 and including the Approval Hearing.

11 (q) “Regulatory Approval” means the final approval from the California
12 Department of Real Estate and any other applicable regulatory authorities having authority with
13 respect to Wyndham, WorldMark, The Club, or WorldMark, The Club’s Vacation Ownership
14 Program or its resorts, from which approval may be required to implement the terms of the
15 Settlement.

16 (r) “Released Persons” means Wyndham Resort Development Corporation, its
17 predecessors and successors in interest (including but not limited to Cendant Corporation {now
18 known as Avis Budget Group, Inc.}, Wyndham Worldwide Corporation, Wyndham Vacation
19 Ownership, Inc., and their respective subsidiaries), and any of its present or former subsidiaries,
20 divisions, parent companies, affiliates, officers, directors, employees, trustees, principals,
21 attorneys, agents, representatives, shareholders, members, partners, and insurers.

22 (s) “Settlement” means the Parties’ settlement, as memorialized in this Settlement
23 Agreement and Release.

24 (t) “Settlement Agreement” means this Settlement Agreement and Release.

25 (u) “Settlement Class” means a settlement class comprised of all WorldMark
26
27
28

Members as of Preliminary Approval.

(v) “Settlement Notice” means a notice directed to Settlement Class members, subject to agreement by the Parties and Court approval, describing among other things the material terms of the Settlement set forth in this Settlement Agreement, the procedure and deadline for objecting to or opting out of the Settlement, and the date and time of the Approval Hearing.

(w) “Settlement-Related Expenses” means fees or expenses incurred for settlement administration and for providing Settlement Notice to the Settlement Class and the CAFA Notice to appropriate authorities. Settlement-Related Expenses incurred and billed by a third party administrator are referred to herein as “TPA Costs.”

(x) “Summary Notice” shall mean a preliminary notice, substantially in the form attached hereto as **Exhibit C**, subject to Court approval, describing the material terms of the Settlement set forth in this Settlement Agreement and advising Settlement Class members that a Settlement Notice will be provided at a later date.

(y) The “Wixons” means Clarke and Rebecca Wixon and Norman and Barbara Wixon.

(z) “WorldMark” means WorldMark, The Club.

(aa) The “WorldMark Board” means the Board of Directors of WorldMark, The Club.

(ab) “Wyndham” means Wyndham Resort Development Corporation (formerly known as Trendwest Resorts, Inc.).

(ac) “Wyndham’s Counsel” means Wyndham’s attorneys of record in the Action, *i.e.*, the law firms of Troutman Sanders LLP and Schiff Hardin LLP.

II. REQUIRED EVENTS

Promptly after execution of this Settlement Agreement by all Parties:

1. a. The Parties will use their best efforts, consistent with the terms of this Settlement Agreement, to obtain the Preliminary Approval Order from the Court. The Parties agree that solely for purposes of the Parties' Settlement, the Preliminary Approval Order shall preliminarily certify the Settlement Class set forth in the Sixth Amended Complaint.

b. Within ten (10) days after the filing of this Settlement Agreement with the Court, Wyndham shall comply with the requirements of 28 U.S.C. § 1715(b) and serve the CAFA Notice upon the appropriate federal official and the appropriate state official(s) of each state in which a settlement class member resides and each state which has applicable regulatory authority over WorldMark's Vacation Ownership Program.

c. Upon entry of the Preliminary Approval Order, Wyndham will use commercially reasonable efforts, consistent with the terms of this Settlement Agreement, to obtain Regulatory Approval of the Settlement. Within 90 days after the entry of the Preliminary Approval Order, the Parties will submit to the Court a joint report advising on the status of efforts to obtain Regulatory Approval, together with a declaration from a Wyndham representative stating whether Wyndham has a good faith basis to forecast that, using commercially reasonable efforts, it will be able to legally extract at least 400 units pursuant to paragraph III.B. of this Settlement Agreement. In the joint report, the Parties will either advise the Court that additional time may be needed before Settlement Notice can be issued to the Class and the Approval Hearing scheduled, or submit to the Court a proposed form of Settlement Notice and a proposed Notice Order that will provide for approval of the form of the Settlement Notice, direct that Settlement Notice be given to the Settlement Class in a manner consistent with the notice provisions set forth herein, and set a schedule leading up to the Approval Hearing.

1
2 d. Certain transactions contemplated by the Settlement may require and be
3 subject to consent by the WorldMark Board. The Parties shall cooperate with each other in
4 good faith in seeking to obtain such consent prior to seeking entry of the Notice Order. The
5 consent of the WorldMark Board may be a necessary and material condition precedent to this
6 Settlement, and should such consent not be obtained prior to entry of the Notice Order, this
7 Settlement is voidable by either party. Any Party voiding the Settlement pursuant to this
8 provision shall give written notice to counsel for the other Parties.
9

10 e. The Settlement Notice shall provide that any Settlement Class member
11 may elect to opt-out of the Settlement, in the manner and by the date specified in the Settlement
12 Notice. Such opt-out rights may only be exercised individually by a Settlement Class member and
13 not in a representative capacity. Any request for exclusion must be postmarked or delivered not
14 later than the date specified in the Court's Notice Order and the Settlement Notice, and any
15 such request shall include (i) the member's full name and current address and telephone
16 number, (ii) the member's WorldMark account number, (iii) the member's signature, and (iv) a
17 specific and clear statement of his or her desire to be excluded from the Settlement. Failure to
18 comply with these requirements and to timely submit a request for exclusion will result in the
19 Settlement Class member being bound by the terms of the Settlement. Within five (5) business
20 days from the last day upon which members may opt out of the Settlement Class, Plaintiffs'
21 Counsel shall notify Wyndham's Counsel, in writing, of the number of persons who elect to be
22 excluded from the Settlement and provide Wyndham's Counsel with copies of the written
23 elections.
24
25

26 f. Wyndham shall have the unilateral right to withdraw from the Settlement
27 prior to the Approval Hearing and cancel this Settlement Agreement, if the number of
28 Settlement Class members who elect to be excluded exceeds five percent (5%) of the total

1
2 Settlement Class, by giving written notice of such withdrawal to Plaintiffs' Counsel. If
3 Wyndham exercises its right of withdrawal pursuant to this provision, the Settlement shall be
4 null and void for all purposes, except for the provisions of paragraphs V.2 and IX.1.

5 g. Any Settlement Class member who timely opts out of the Settlement
6 may not file an objection to the Settlement and shall be deemed to have waived any rights or
7 benefits under this Settlement Agreement.
8

9 2. The Parties will use their best efforts, consistent with the terms of this
10 Settlement Agreement, to obtain the Approval Order from the Court. Should the Court
11 disapprove of or modify the Settlement or this Settlement Agreement or any term or provision
12 of this Agreement, or fail to approve this Settlement Agreement in its entirety, this Settlement
13 is voidable by either Party within a period of thirty (30) days after such disapproval or
14 modification. Any Party voiding the Settlement pursuant to this provision shall give written
15 notice to counsel for the other Parties.
16

17 3. The Parties shall cooperate with each other in good faith to carry out the
18 purposes of and to effectuate this Settlement Agreement, shall promptly perform their
19 respective obligations hereunder, and shall promptly take any and all actions and execute and
20 deliver any and all documents and other materials and/or information reasonably necessary or
21 appropriate to carry out the terms of this Settlement Agreement and the transactions, actions, or
22 activities contemplated thereby.
23

24 4. Upon entry of the Approval Order, the Action shall be dismissed, with prejudice,
25 subject to the continuing jurisdiction of this Court and pursuant to the provisions of paragraphs
26 VII.D. and VII.E.

27 5. Certain transactions contemplated by the Settlement require and are subject to
28 Regulatory Approval. The Parties shall cooperate with each other in good faith and use

commercially reasonable efforts to obtain Regulatory Approval as expeditiously as reasonably possible after entry of the Approval Order. Should Wyndham not be able to implement the terms of this Settlement Agreement, then Wyndham shall have a right to void the Settlement in accordance with the provisions of paragraph III.B.6. If the Settlement is voided after the Effective Date pursuant to this paragraph, the Parties shall promptly advise the Court and the provisions of paragraph VII.E. shall be implemented pursuant to the Court's continuing jurisdiction.

III. SETTLEMENT TERMS.

As consideration for dismissal of the Action, dismissal of the Wixons' complaint in intervention in the State Case,¹ and the release of claims as provided for in this Settlement Agreement, the Parties have agreed to and shall adopt and fully implement the following provisions:

A. Credit cancellation at the Disputed Resorts.

1. On completion of the First Transfer Phase (as that term is defined in paragraph III.B.1.), Wyndham will legally and effectively cancel 22 million Vacation Credits that are currently held by Wyndham as unsold developer Credits. Those cancelled Vacation Credits will no longer be available for sale, and will not be sold, to any consumer as WorldMark Vacation Credits, and Wyndham's rights and obligations as to those cancelled Vacation Credits will be eliminated. The Parties agree that the specific number of Credits to be cancelled at the Disputed Resorts is set out in **Exhibit D** to this Settlement Agreement.

¹ "State Case" means and refers to a proceeding commenced by WorldMark filing a petition in the Superior Court of California for Sacramento County, entitled *WorldMark, The Club v. Robin Miller and Wyndham Resort Development Corp.*, Case No. 2008-00025130-CU-PT-GDS, and the Wixons' complaint in intervention filed in that case in which they assert claims against WorldMark, and any appeals pertaining to that action. The term "State Case" as used in the Settlement Agreement excludes and is meant to preserve any and all claims and interests Respondent Miller has asserted in that proceeding.

2. Within fifteen (15) days after the Effective Date, or as soon as practicable thereafter, the WorldMark reservation system shall be modified (“Modification Date”) such that the new credit values at the affected resorts will be in place for reservations for travel dates occurring on or after the Modification Date. The account of any WorldMark Member making a reservation at an affected resort prior to the Modification Date for travel dates occurring on or after the Modification Date will be adjusted such that the Member will have the benefit of the new credit values. The reservation system modification to be effected on the Modification Date will not alter or affect the date for cancellation of Vacation Credits as set forth in paragraphs III.A.1. and paragraphs III.B.1. and 6., and Wyndham retains all rights and obligations as to the Vacation Credits until they are cancelled.

3. Should the Settlement be voided by Wyndham after the Modification Date, pursuant to paragraph III.B.6., credit values at the resorts set forth on **Exhibit D** shall revert to the values in place prior to the Modification Date.

B. Extraction of units and Credits.

1. Within twelve (12) months after the Effective Date, or any additional periods as provided in paragraph III.B.6., WorldMark will legally and effectively transfer to Wyndham or its assignee units from certain WorldMark resorts from a minimum of 400 units and up to a maximum of all of the units identified on **Exhibit E**. Wyndham will complete the transfer of at least 400 units as soon as practical upon obtaining Regulatory Approval (“First Transfer Phase”). After the First Transfer Phase is complete, the Vacation Credits associated with those transferred units will be cancelled and will no longer be available for sale, and will not be sold, to any consumer as WorldMark Vacation Credits. Wyndham retains all rights and obligations as to those Vacation Credits prior to completion of the First Transfer Phase. Except as described below with respect to units transferred from WorldMark’s Anaheim resort, the

units to be transferred shall consist of units determined to be underutilized based on analysis of certain reserved credit occupancy and Vacation Credit utilization data. The maximum number of units to be transferred and Credits cancelled at the specific WorldMark resorts is set out in **Exhibit E** to this Settlement Agreement.

2. (a) Subject to consent by Class Counsel and the WorldMark Board, and approval by the Court, Wyndham shall have the right, during the First Transfer Phase to substitute WorldMark units for transfer, subject to the overall 481 unit maximum and 245.6 million cap on Vacation Credits associated with the transferred units. Substitute units shall be identified under criteria similar to those used to identify the original units to be transferred. Subject to Court approval, any hearing the Court may hold regarding the substitution of units need not be noticed to Settlement Class members.

(b) After the First Transfer Phase is complete, Wyndham may continue to substitute units under criteria similar to those used to identify the original units to be transferred, subject to the overall 481 unit maximum and 245.6 million cap on Vacation Credits associated with the transferred units, and subject to consent by Class Counsel and the WorldMark Board and approval by the Court (“Additional Transfer Phase”).

3. Within ninety (90) days after the Effective Date, and every ninety (90) days thereafter, Wyndham shall submit to Class Counsel a report advising of the status of Regulatory Approval until the transfer of units has been finally and fully performed as provided in paragraphs III.B.5. and 6., or the Settlement Agreement has been voided, as provided in paragraph III.B.6.

4. When the First Transfer Phase is complete, Wyndham shall promptly notify the Court and Class Counsel and Wyndham’s right to void the Settlement pursuant to paragraph III.B.6. shall be extinguished.

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2 5. After the First Transfer Phase is complete, to the extent that Wyndham
3 has not reached the 481 unit maximum or the 245.6 million cap on Vacation Credits, it shall
4 have the right to either (i) continue to attempt to legally transfer the remaining WorldMark
5 units, or substitute WorldMark units as provided in paragraph III.B.2., or (ii) declare that
6 paragraph III.B.1. has been finally and fully performed. When the Additional Transfer Phase is
7 complete, Wyndham shall promptly notify the Court and Class Counsel that paragraph III.B.1.
8 of this Settlement Agreement has been finally and fully performed.
9

10 6. If Wyndham is unable, using commercially reasonable efforts, to obtain
11 Regulatory Approval to transfer a minimum of 400 units as provided in paragraphs III.B.1. and
12 2., then Wyndham shall have the right to either void the Settlement or, provided that Wyndham
13 has acted in good faith and with due diligence in its efforts to transfer the units, request
14 approval from Class Counsel for up to an additional six (6) month time period within which to
15 obtain Regulatory Approval to transfer additional units or substitute units, which approval shall
16 not be unreasonably withheld by Class Counsel. If, after the expiration of this additional time
17 period, Wyndham still is unable, using commercially reasonable efforts, to obtain Regulatory
18 Approval to transfer a minimum of 400 units, then Wyndham shall have the right to either void
19 the Settlement or, provided that Wyndham has acted in good faith and with due diligence in its
20 efforts to transfer the units, to request approval from the Court for an additional time period
21 within which to obtain Regulatory Approval to transfer additional units. If Wyndham exercises
22 its right to void the Settlement pursuant to this provision, the Settlement will be null and void,
23 except for the provisions of paragraphs V.4. and IX.1. If Wyndham exercises its right to void
24 the Settlement pursuant to this provision, the provisions of paragraph VII.E. shall be
25 implemented pursuant to the Court's continuing jurisdiction.
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7. The WorldMark reservation system shall be modified as of nine (9)

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2 months after the Effective Date, or as soon as practicable thereafter, such that the units being
3 transferred will no longer be available for occupancy by WorldMark Members; however, all
4 existing reservations as of that date will be honored.

5 **C. Exchange of units in Anaheim, California resort area.**

6 When the First Transfer Phase is complete, Wyndham will legally and effectively
7 transfer twenty-one (21) units and corresponding Vacation Credits from WorldMark Anaheim
8 and will add weeks equivalent to twenty-one (21) units and corresponding Vacation Credits at
9 the WorldMark Dolphin's Cove Resort. Also when the First Transfer Phase is complete,
10 Wyndham will legally and effectively cancel seven million Vacation Credits, which is the
11 difference between the number of Vacation Credits removed from Anaheim and the number of
12 Vacation Credits added at Dolphin's Cove, as set out in **Exhibit E** to this Settlement
13 Agreement.
14

15 **D. Aggregate Changes in Credits and Units and Reserves.**

16 1. The Parties agree that the maximum aggregate number of Credits to be
17 cancelled, removed by extraction, and added is computed approximately as follows: 22 million
18 cancelled + 262.5 million extracted (less 9.86 million added to WorldMark Dolphin's Cove) =
19 274.7 million net reduction in the number of Credits held by Wyndham for sale as WorldMark
20 Vacation Credits. Wyndham's rights and obligations, including voting rights, with respect to
21 the Credits to be cancelled shall terminate upon cancellation of those Credits. Wyndham shall
22 maintain sufficient unsold developer Credits to effectuate the purposes and terms of this
23 Settlement Agreement, upon entry of the Preliminary Approval Order and up to the time that the
24 terms of the Settlement Agreement have been performed or the Settlement is voided.
25

26 2. Exterior reserves for future refurbishment and repair at resorts where
27 units are being extracted shall be transferred to, and held by, an independent association or
28

governing body responsible for exterior maintenance at the resort. Interior reserves for future refurbishment and repair of the extracted units will be deposited with an escrow agent with instructions that (i) the interior reserve monies will be held in a federally-insured, interest-bearing account for the benefit of Wyndham; and (ii) the monies will be released as instructed by Wyndham, in such amounts and at such times as Wyndham determines, solely for the purpose of refurbishment and repair of the extracted units.

E. Cessation of sales of TravelShare with Fun Time. Wyndham will cease selling new TravelShare memberships with Fun Time on the later of October 31, 2011 or 90 days after the Effective Date. Sales of new TravelShare memberships without Fun Time may continue after such deadline.

F. WorldMark budget. In formulating the WorldMark budgets, Wyndham, as manager of WorldMark, will use commercially reasonable efforts to drive efficiencies in order to minimize the impact, if any, of this Settlement on maintenance fees paid by the members of the Settlement Class. Notwithstanding these efforts, Wyndham acknowledges that the WorldMark By-laws cap annual dues increases, and Wyndham, so long as it is operating under its current management agreement with WorldMark, agrees to bear any incremental costs that may result in a total annual increase above the annual cap.

G. Election issues. Upon entry of the Preliminary Approval Order, Wyndham will work in conjunction with the Board to establish and maintain a separate internet website for members to access during election cycles for the sole purpose of, and with content solely pertaining to, posting comments regarding Board candidates or WorldMark election matters, including proposals to be presented to members for a membership vote, subject to reasonable review and approval of any member postings by the Board or the Board's authorized designee.

Wyndham will notify WorldMark Members as to that website's existence via Destinations Magazine and the Insider Magazine.

H. Party Weekends. Wyndham may continue to book Party Weekends at WorldMark resorts, subject to the following condition: Wyndham will not book Party Weekends at any specific WorldMark resort during any particular calendar month in which the occupancy at the resort has exceeded 90% based on occupancy data from the same month in the preceding calendar year.

IV. NOTICE AND RELATED PROVISIONS.

1. Subject to Court approval, notice of the Settlement shall be provided to the Settlement Class as follows:

a. Within ten (10) business days after entry of the Preliminary Approval Order, the Summary Notice shall be posted in a clear and prominent manner in a location accessible only to WorldMark Members on the WorldMark by Wyndham website (www.worldmarktheclub.com). On WorldMark's home page, Members will be instructed how to access the Summary Notice and be linked to the sign-in page. The Summary Notice shall remain on the WorldMark by Wyndham website through the date of the posting of the Settlement Notice.

b. Within ten (10) business days after entry of the Preliminary Approval Order, Plaintiffs' Counsel shall post in a clear and prominent manner the Summary Notice on the Girard Gibbs LLP website (www.girardgibbs.com). The Summary Notice shall remain on that website through the date of the posting of the Settlement Notice.

c. Within fifteen (15) business days after entry of the Notice Order, the Settlement Notice shall be sent by U.S. mail, bulk rate postage, to all Settlement Class members.

d. Within ten (10) business days after entry of the Notice Order, the Settlement Notice shall be posted in a clear and prominent manner in a location accessible only to WorldMark Members on the WorldMark by Wyndham website (www.worldmarktheclub.com). On WorldMark's home page, Members will be instructed how to access the Settlement Notice and be linked to the sign-in page. The Settlement Notice shall remain on the WorldMark by Wyndham website through the date of the Approval Hearing.

e. Within ten (10) business days after entry of the Notice Order, Plaintiffs' Counsel shall post in a clear and prominent manner the Settlement Notice on the Girard Gibbs LLP website (www.girardgibbs.com). The Settlement Notice shall remain on that website through the date of the Approval Hearing.

2. Not later than five (5) days before the Approval Hearing, Plaintiffs' Counsel and Wyndham's Counsel each shall file a sworn declaration attesting that the Summary Notice and the Settlement Notice were disseminated to Settlement Class members in a manner consistent with the terms of this Settlement Agreement, the Preliminary Approval Order, and the Notice Order.

3. All costs associated with the mailed Settlement Notice shall be paid as agreed in paragraphs V.1.-4. Each Party shall bear separately any costs associated with posting settlement notice on its respective website(s).

V. SETTLEMENT PAYMENT AND ADMINISTRATION COSTS.

1. Wyndham agrees to pay, and will not object to Plaintiffs' application to the Court for, a fee award in an amount not to exceed five million dollars (\$5,000,000) ("Fee Award"), which Fee Award shall include any representative awards and Plaintiffs' Counsels' attorneys' fees and expenses, including Plaintiffs' expert witness fees and other investigative or litigation expenses incurred by Plaintiffs, settlement administration fees and expenses, and fees

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2 or expenses associated with disseminating Settlement Notice to the Settlement Class and the
3 CAFA Notice to the appropriate authorities. Wyndham shall pay the amount of any such Fee
4 Award up to and including the sum of \$5,000,000, provided that in no event shall Wyndham be
5 required to pay any Fee Award or any monetary amount in settlement greater than \$5,000,000,
6 and Plaintiffs shall be responsible for paying all of the foregoing fees and expenses from such
7 Fee Award, including all Settlement-Related Expenses, subject to the provisions and conditions
8 below.
9

10 2. In the event that Wyndham exercises its right to withdraw from the Settlement
11 prior to the Approval Hearing and cancel this Settlement Agreement, pursuant to paragraph
12 II.1.f., the Parties shall be responsible for TPA Costs as follows: (a) Wyndham shall pay up to
13 and including the first \$400,000 of all such TPA Costs; (b) Plaintiffs shall pay only that portion
14 of the TPA Costs that exceed \$400,000. Plaintiffs shall pay all other Settlement-Related
15 Expenses, if any.
16

17 3. In the event the Settlement is not granted Final Approval by the Court, TPA
18 Costs shall be allocated and paid as follows: (a) Plaintiffs shall pay up to and including the first
19 \$400,000 of all such TPA Costs; (b) Wyndham shall pay only that portion of the TPA Costs that
20 exceed \$400,000. Any third-party administrator retained by Plaintiffs to provide settlement
21 administration or to provide the Settlement Notice to the Settlement Class and notice to
22 appropriate authorities under CAFA shall agree, in advance, to this arrangement for payment,
23 and shall not seek to recover from the Parties, as joint and several obligors, for any
24 administration costs in this action.
25

26 4. Wyndham, at its sole expense, will use commercially reasonable efforts to obtain
27 any Regulatory Approval that may be necessary for the Parties to effectuate the terms of the
28 Settlement. If Wyndham is unable to obtain Regulatory Approval as required by paragraph

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2 III.B.6. of this Settlement Agreement, then Wyndham shall bear full responsibility for payment
3 of all TPA Costs. If the Settlement is voided by Wyndham after the Effective Date, pursuant to
4 the provisions of paragraph III.B.6, and the Court determines that further notice to the
5 Settlement Class is required, then Wyndham shall pay all such notice costs.

6
7 5. a. Subject to the provisions of paragraphs II.1.f. and V.6. of this Settlement
8 Agreement, within thirty (30) days after the Court enters a final Fee Award, Wyndham shall
9 deposit the Fee Award amount (in no event to exceed \$5,000,000) into an interest bearing
10 escrow account held at a bank or financial institution to be designated by Plaintiffs' Counsel.
11 Plaintiffs (and not Wyndham) shall be solely responsible and obligated for payment of any costs
12 or fees associated with the escrow account, the escrow agent, the escrow agreement, and any
13 transfer of funds into or out of the escrow account.

14
15 b. In the event the Approval Order is appealed and reversed and such
16 reversal becomes final (*i.e.*, all appeals and avenues of review are exhausted) ("Final Adverse
17 Judgment"), or the Settlement is voided pursuant to the provisions of paragraph III.B.6., or the
18 Settlement and this Settlement Agreement shall become void or cancelled for any other reason
19 after the deposit is made, the full amount of the Fee Award together with any interest amounts
20 that have accrued thereon shall be paid to Wyndham within five (5) business days of such Final
21 Adverse Judgment or the voiding of the Settlement.

22
23 c. The Fee Award amount and any interest amounts that have accrued
24 thereon shall be transferred to Plaintiffs' Counsel for deposit into the Girard Gibbs LLP
25 Attorney-Client Trust Account as follows:

26 (i) When the First Transfer Phase has been completed pursuant to the
27 provisions of paragraph III.B. of this Settlement Agreement, if Wyndham elects to continue to
28 attempt to legally transfer the remaining WorldMark units or substitute WorldMark units, as

provided in paragraphs III.B.2. and III.B.5. of this Settlement Agreement, ninety percent (90%) of the Fee Award amount shall be transferred within ten (10) business days into the Girard Gibbs LLP Attorney-Client Trust Account. The remainder of the Fee Award and any interest amounts that have accrued thereon shall be transferred into the Girard Gibbs LLP Attorney-Client Trust Account upon the earlier of the date the Additional Transfer Phase is complete or Wyndham elects to declare paragraph III.B. to be finally and fully performed.

(ii) When the First Transfer Phase has been completed pursuant to the provisions of paragraph III.B. of this Settlement Agreement, if Wyndham elects to declare paragraph III.B. to be finally and fully performed, the total Fee Award amount and any interest amounts that have accrued thereon shall be transferred to the Girard Gibbs LLP Attorney-Client Trust Account.

6. This Settlement Agreement and the Parties' Settlement is not contingent upon the Court's award of attorneys' fees, whatever that amount may be, provided the Fee Award is not in an amount in excess of \$5,000,000. Plaintiffs and their counsel waive any right to seek or to enforce or to execute on any Fee Award in excess of \$5,000,000; and Wyndham's obligation to deposit amounts in an escrow account as provided in paragraph V.5. is conditioned upon the final Fee Award being an amount not to exceed \$5,000,000. In the event the Court renders a Fee Award or other monetary award in the aggregate amount greater than \$5,000,000, Plaintiffs shall execute and enter a satisfaction of judgment upon receipt of \$5,000,000, pursuant to paragraph V.5., and seek modification of any such Fee Award or monetary award to an aggregate amount of \$5,000,000 or less.

VI. APPROVAL HEARING AND ORDER.

1. Subject to the provisions of paragraph II.1.c., the Parties shall, within 90 days after the entry of the Preliminary Approval Order, jointly apply to the Court for entry of the

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2 Notice Order and a scheduled date and time for the Approval Hearing or advise the Court that
3 additional time may be needed before Settlement Notice can be issued to the Class and an
4 Approval Hearing scheduled. At the Approval Hearing, the Parties will move for final approval
5 of the Settlement set forth in this Settlement Agreement and entry of the Approval Order, and
6 Class Counsel will move for approval of the Fee Award.
7

8 2. a. As part of the application described in paragraph VI.1., the Parties will
9 ask the Court to enter an order requiring any Settlement Class member who wishes to be heard
10 at the Approval Hearing or to have his or her objection considered by the Court, to file with the
11 Court a written notice of objection and, if applicable, notice of the member's intent to appear at
12 the Approval Hearing, and to provide copies of same to Plaintiffs' Counsel and Wyndham's
13 Counsel, at least ten (10) days before the Approval Hearing. To state a valid objection to the
14 Settlement or the requested Fee Award, an objecting Settlement Class member must provide
15 the following information in his or her written objection: (i) the member's full name and
16 current address and telephone number, (ii) the member's WorldMark account number, (iii) the
17 member's signature, and (iv) a specific and clear statement of the position(s) the objector
18 wishes to assert, including the factual and legal grounds for the position. The notice of intent to
19 appear must include copies of any papers, exhibits, or other evidence that the objecting
20 Settlement Class member (or his or her counsel) will present to the Court in connection with
21 the Approval Hearing.
22

23
24 b. Subject to Court approval, the Parties agree that any Settlement Class
25 member who does not provide a notice of intent to appear or of written objection in compliance
26 with the deadlines set forth herein and in the Notice Order will be deemed to have waived any
27 objections and opposition to the fairness, adequacy, and reasonableness of the Settlement and
28

shall not be permitted to object, present argument, or comment at the Approval Hearing, either individual or through counsel or other representative.

c. These agreed-upon procedures and requirements for written objection and written notice of intent to appear in connection with the Approval Hearing are intended to ensure the efficient administration of justice and orderly presentation of any Settlement Class member's objection to the Settlement Agreement, in accordance with the due process rights of all members.

3. If the Settlement is approved as agreed to by the Parties, the Parties will move jointly for entry of the Approval Order. Should the Court disapprove of or modify the Settlement or this Settlement Agreement or any term or provision of this Settlement Agreement, or fail to approve this Settlement Agreement in its entirety, the Settlement is voidable by either party. Any Party voiding the Settlement pursuant to this provision shall give written notice to counsel for the other Parties.

VII. RELEASES, DISMISSAL OF ACTION AND STATE CASE, AND JURISDICTION OF COURT.

A. Acknowledgement With Respect To Credit Values At Future WorldMark Resorts.

1. In consideration of the terms and undertakings herein, it is acknowledged and understood by the Parties as follows: The existing WorldMark resorts have a range of credit values. Wyndham, in its role as developer, may consider, among other factors (such as owner demand, cost and other factors), the range of credit values at existing WorldMark resorts in exercising its reasonable discretion pursuant to Section 3.4(a) of the Declaration of Vacation Ownership to allocate credit values to each unit of any new WorldMark resort. Neither past practices nor credit values at existing resorts shall restrict or limit Wyndham's reasonable discretion to set credit values at any new resort or require the new resort to be at the same level

as credit values at any existing resorts. Wyndham's consideration of the credit values at existing WorldMark resorts in allocating credit values to units at any new WorldMark resort shall be a valid, reasonable, and sufficient exercise of its discretion under Section 3.4(a) of the Declaration of Vacation Ownership. Nothing herein shall be construed to amend the WorldMark Governing Documents.

2. By the Effective Date, Wyndham shall include in its sales documentation (for upgrade sales and new sales of Vacation Credits) notice that the credit values at future WorldMark resorts, if any, may be higher or lower than the credit values at existing WorldMark resorts.

B. Release Of Claims.

1. Upon the Effective Date, for and in consideration of the terms and undertakings herein, Plaintiffs and all members of the Settlement Class who do not timely elect to opt out of the Settlement, for themselves and for their assigns, agents, representatives, attorneys, heirs, executors, administrators, beneficiaries, and privies, release Wyndham, its predecessors and successors in interest (including but not limited to Cendant Corporation {now known as Avis Budget Group, Inc.}, Wyndham Worldwide Corporation, Wyndham Vacation Ownership, Inc., and their respective subsidiaries), and any of its present or former subsidiaries, divisions, parent companies, affiliates, officers, directors, employees, trustees, principals, attorneys, agents, representatives, shareholders, members, partners, and insurers (collectively, "Released Persons"), as well as any person acting or purporting to act on behalf of those in privity with such Released Persons, from all manner of actions, causes of action, lawsuits, claims, counterclaims, damages, debts, obligations, liabilities, promises, defenses, agreements, costs, expenses (including attorneys' fees), and demands of whatever kind or nature, whether based on statute (including without limitation the California statutes referred to as the Unfair

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2 Competition Law, the Consumers' Legal Remedies Act, and the Vacation-Ownership
3 Timeshare Act), tort, contract, or other theory of recovery, whether known or unknown,
4 suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent,
5 liquidated or unliquidated, that, as of the date that the Approval Order is entered: (i) arise out of
6 or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or
7 occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to
8 in the Action; (ii) arise from or are based on the allegations, transactions, facts, matters,
9 occurrences, representations or omissions alleged, involved, set forth or referred to in the
10 complaints filed in the Action with respect to the right, authority or discretion of Wyndham, or
11 its predecessors or successors in interest, to formulate, allocate, establish, or set (a) Credit
12 Values and (b) the number of weeks worth of Vacation Credits to be sold or set aside, at
13 Vacation Properties owned and operated by WorldMark; or (iii) any claim that was or could
14 have been asserted against Wyndham or any Released Person by the Class Representatives or
15 any member of the Settlement Class in the Action or in the State Case (collectively, "Released
16 Claims"). The Class Representatives and all members of the Settlement Class who do not
17 timely elect to opt out of the Settlement expressly waive and/or are deemed to waive all rights
18 under California Civil Code Section 1542, which provides

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
22 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN
23 HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
24 RELEASES, WHICH IF KNOWN BY HIM OR HER MUST HAVE
25 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
26 DEBTOR.

27 The Parties acknowledge that the foregoing waiver and release was bargained for and is a
28 material element of the Settlement Agreement.

2. Except as specifically set forth in this Settlement Agreement, neither the
Settlement nor this Settlement Agreement in any way alters, merges, terminates, bars, waives,

voids, satisfies, novates, abrogates, diminishes, releases, or discharges the indebtedness or other contractual obligation of any Class Representative or member of the Settlement Class regarding the full, complete, and timely performance of any and all terms of any loan, note, mortgage, security deed, agreement, or contract, oral or written, entered into as between any Class Representative or member of the Settlement Class and any Released Person, or any person acting or purporting to act on behalf of those in privity with such Released Persons, in conjunction with the purchase, financing, or ownership of WorldMark Vacation Credits (including without limitation any dues or fee obligation) or any matter, incident, or benefit related thereto (including without limitation TravelShare membership).

3. Upon the Effective Date, for and in consideration of the terms and undertakings herein, Wyndham releases Plaintiffs Clarke and Rebecca Wixon, Norman and Barbara Wixon, and Kandice Scattolon and Plaintiffs' Counsel from any and all claims or causes of action that were, or could have been, asserted by Wyndham pertaining to the Action or the State Case ("Additional Released Claims"). Wyndham recognizes that, even if it later discovers facts in addition to or different from those which it now knows or believes to be true, Wyndham nevertheless agrees that, upon entry of judgment, Wyndham fully, finally and forever settles and releases any and all of the Additional Released Claims. Additional Released Claims do not include any claims, counterclaims, or cross-claims Wyndham may have, if any, in the State Case with respect to WorldMark or Respondent Miller. Additional Released Claims also do not include any liabilities, claims, rights, suits, or causes of action any Party hereto may assert to enforce the terms of this Settlement Agreement. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement.

4. Released Claims do not include any claims, counterclaims, or cross-

claims Wyndham may have, if any, in the State Case. Released claims also do not include any liabilities, claims, rights, suits or causes of action either Party may assert to enforce the terms of this Settlement Agreement.

C. Covenant Not To Sue.

1. Plaintiffs and all members of the Settlement Class who do not timely elect to opt out of the Settlement further agree and covenant not to sue, bring any proceeding or action, or participate in any proceeding or action in an individual, joint, representative, or class capacity, in law or in equity, including without limitation any action in any court or arbitration forum, whether by original process or demand, claim, counterclaim, cross-claim, third-party process, interpleader, claim for indemnity or contribution, or otherwise, against any of the Released Persons for any Released Claim or any other matter settled in this Settlement Agreement.

2. Wyndham further agrees and covenants not to sue, bring any proceeding or action, or participate in any proceeding or action in an individual, joint, representative, or class capacity, in law or in equity, including without limitation any action in any court or arbitration forum, whether by original process or demand, claim, counterclaim, cross-claim, third-party process, interpleader, claim for indemnity or contribution, or otherwise, against Plaintiffs Clarke Wixon, Rebecca Wixon, Norman Wixon, Barbara Wixon or Kandice Scattolon or their Counsel for any Additional Released Claim or any other matter settled in this Settlement Agreement.

D. Dismissal.

Upon entry of the Approval Order, (i) the Action shall be dismissed, with prejudice, subject to the continuing jurisdiction of this Court and the provisions of paragraph VII.E.; and (ii) the Wixons shall dismiss with prejudice their complaint in intervention in the State Case

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2 and withdraw from the State Case, including any proceedings in any California appellate court.
3 Further, upon issuance of the Approval Order: (i) Wyndham shall not be subject to liability or
4 expense of any kind to any Settlement Class member who does not opt out of the Settlement for
5 reasons related to the Action or State Case, except as set forth herein; and (ii) Settlement Class
6 members who do not opt out of the Settlement shall be permanently barred and enjoined from
7 initiating, asserting, or prosecuting any and all Released Claims against Wyndham or any other
8 Released Person, subject to the provisions of paragraph VII.E.
9

10 **E. Required Actions If Settlement Is Voided After Effective Date.**

11 If the Settlement is voided by Wyndham after the Effective Date pursuant to the
12 provisions of paragraph III.B.6., the Parties shall, within ten (10) business days, move for an
13 Order from the Court pursuant to the Court's continuing jurisdiction that: (i) the judgment and
14 dismissal of the action be vacated; (ii) Plaintiffs' Fifth Amended Class Action Complaint and
15 Wyndham's Answer thereto be reinstated as the operative pleadings and the record be
16 reinstated in the litigation; (iii) the Parties shall be restored to their respective positions in the
17 litigation as of July 2, 2010; (iv) all Settlement Class members shall be restored to their
18 respective positions as of July 2, 2010, (v) the parties shall confer with respect to a new joint
19 Case Management Statement; and (vi) notice to the Settlement Class shall be provided, if
20 deemed necessary by the Court.
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23 **VIII. REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

24 1. Plaintiffs' Counsel, who are signatories hereof, represent and warrant that they
25 have the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement
26 Agreement and to consummate all of the transactions contemplated hereby. This Settlement
27 Agreement has been duly and validly executed and delivered by Plaintiffs' Counsel and
28 Plaintiffs and constitutes their legal, valid, and binding obligation.

2. Wyndham, through its undersigned counsel, represents and warrants that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby; provided, however, that the Parties acknowledge that certain approvals may be required of third parties, as set forth herein, which are outside the control of Wyndham. The execution, delivery, and performance by Wyndham of this Settlement Agreement and its consummation of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Wyndham. This Settlement Agreement has been duly and validly executed and delivered by Wyndham's Counsel and Wyndham and constitutes their legal, valid, and binding obligation.

3. This Settlement Agreement is entered into solely for purposes of compromise and settlement. In the event the Approval Order is not entered or is subsequently reversed on appeal or the Effective Date does not occur for any reason or the Settlement Agreement is voided pursuant to paragraph III.B.6., the Parties' Settlement and this Settlement Agreement, including any releases or dismissals hereunder, are canceled and null and void, and no term or condition of this Settlement Agreement or any draft thereof, or the discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any force or effect, except as expressly set forth in this Settlement Agreement; nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever, in the Action, the State Case, or any other action or proceeding, and all Parties shall be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

IX. ADDITIONAL PROVISIONS.

1. This Settlement Agreement may not be used in evidence and is not, and shall not at any time be construed or deemed to be, an admission or concession by Wyndham with respect to any alleged wrongdoing, violation of law, breach of contract, breach of any covenant,

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2 liability, fault, or omission of any kind whatsoever, regardless of whether this Settlement
3 Agreement results in entry of the Approval Order as contemplated herein. Wyndham denies all
4 of the allegations, counts, and claims made by Plaintiffs in connection with the Action and the
5 State Case. Neither this Settlement Agreement nor any class certification pursuant to it shall
6 constitute, in this or in any other proceeding, an admission by Wyndham, or evidence or a
7 finding of any kind, that any requirement for class certification is satisfied with respect to the
8 Action, or any other litigation, except for the limited purpose of settlement pursuant to this
9 Settlement Agreement. This Settlement Agreement is made with the Parties' express
10 understanding and agreement that, (a) under applicable laws, it is appropriate that a class be
11 certified for settlement purposes only (*i.e.*, without needing to satisfy fully the standard
12 required for certification of the matter for litigation purposes); and (b) Wyndham contests and
13 denies that any class, including the proposed Settlement Class, is suitable for certification as a
14 class under the law of any jurisdiction, other than for the purposes of this Settlement
15 Agreement. This provision shall survive any voiding of this Settlement Agreement.
16
17

18 2. The Parties agree that the settlement consideration and other terms of the
19 Settlement set forth in this Settlement Agreement were negotiated at arm's length in good faith
20 by the Parties, and reflect a Settlement that was reached voluntarily after consultation with
21 experienced legal counsel.
22

23 3. The Parties agree to cooperate in good faith in the execution and implementation
24 of the Settlement, and may mutually agree in writing to an amendment of the Settlement
25 Agreement if deemed reasonable and necessary to effectuate the purpose and intent of the
26 Settlement. The Parties agree that the terms of this Settlement Agreement can be
27 implemented by amendment of the WorldMark Declarations of Vacation Ownership for the
28 specific resorts affected by this Settlement Agreement and the execution of other documents

1
2 necessary to implement the terms of this Settlement Agreement without further vote of the
3 WorldMark Membership.

4 4. This Settlement Agreement may not be modified or amended, nor may any of its
5 provisions be waived, except by a writing signed on behalf of all Parties or their successors-in-
6 interest.

7
8 5. The headings in this Settlement Agreement are used for the purpose of
9 convenience only and are not meant to have legal effect.

10 6. The administration and consummation of the Settlement set forth in this
11 Settlement Agreement will be under the authority of the Court in the Action, and the Court will
12 retain jurisdiction for, among other things, entering orders concerning enforcement of this
13 Settlement Agreement.

14
15 7. The waiver by one Party of any breach of this Settlement Agreement by any
16 other Party will not be deemed a waiver of any other prior or subsequent breach of this
17 Settlement Agreement.

18 8. The exhibits to this Settlement Agreement are an integral part of the Settlement
19 and are expressly incorporated in and made a part of this Settlement Agreement. This
20 Settlement Agreement and its exhibits constitute the entire agreement among the Parties
21 concerning the Settlement of the Action; and no representations, warranties, or inducements
22 have been made by any Party concerning this Settlement Agreement and its exhibits other than
23 those contained and memorialized in such documents. This Settlement Agreement supersedes
24 all prior understandings, communications, and agreements with respect to the subject of this
25 Settlement Agreement.

26
27 9. This Settlement Agreement may be executed in one or more counterparts. All
28 executed counterparts and each of them will be deemed to be one and the same instrument,

1
2 provided that the Parties' respective counsel exchange among themselves all signed
3 counterparts.

4 10. This Settlement Agreement will be binding on, and inure to the benefit of, all
5 representatives, heirs, successors, and assigns of the Parties.

6 11. The construction, interpretation, operation, effect, and validity of this Settlement
7 Agreement, and all documents necessary to effectuate it, will be governed by the internal laws
8 of the State of California without giving effect to any choice or conflict of law provision or rule
9 that would cause the application of the laws of any other jurisdiction.

10 12. Except as otherwise provided in this Settlement Agreement, each Party shall
11 bear his, her, or its own costs of litigation and the Settlement.

12 13. The Parties reserve the right, by agreement and subject to Court approval, to
13 grant any reasonable extension of time that might be necessary to carry out the provisions of
14 this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or
15 typographical errors contained in any of the Settlement papers.

16 14. Proper notice shall be given to Plaintiffs and Wyndham of all applications for
17 Court approval or Court orders required under this Settlement Agreement.

18 15. The determination of the terms of, and the drafting of, this Settlement
19 Agreement has been by mutual agreement after negotiation, with consideration by and
20 participation of all Parties and their counsel. Since this Settlement Agreement was drafted with
21 the participation of all Parties and their counsel, the presumption that ambiguities shall be
22 construed against the drafter does not apply. The Parties were represented by competent and
23 effective counsel throughout the course of settlement negotiations and in the drafting and
24 execution of this Settlement Agreement, and there is no disparity in bargaining power between
25 the Parties to this Settlement Agreement.
26
27
28

1
2 16. This Settlement Agreement constitutes the entire, fully integrated agreement
3 among the Parties and cancels and supersedes all prior written and unwritten agreements and
4 understandings pertaining to the Parties' Settlement.

5 17. Plaintiffs' Counsel and Wyndham's Counsel agree to cooperate fully with one
6 another in seeking entry of the Preliminary Approval Order, the Notice Order, the Court's
7 approval of this Settlement Agreement and the Settlement set forth herein, and entry of the
8 Approval Order, and to promptly agree on and execute all such other documentation as may be
9 reasonably required to obtain the Court's approval of the Settlement.
10

11 18. The Parties agree that any disputes regarding the meaning of the terms and
12 conditions of this Settlement Agreement, the Parties' rights and obligations under this
13 Settlement Agreement, or the manner in which any issue or dispute arising under this
14 Settlement Agreement should be resolved, shall be submitted to the Court for resolution.
15

16 19. All notices to the Parties or Counsel required by this Settlement Agreement shall
17 be made in writing and communicated by electronic and regular mail to the following addresses
18 (unless one of the Parties subsequently designates one or more other designees):

19 Plaintiffs' Counsel:

20 Jonathan K. Levine
21 Elizabeth C. Pritzker
22 GIRARD GIBBS LLP
23 601 California Street, Suite 1400
24 San Francisco, California 94108
25 Telephone: (415) 981-4800
26 Facsimile: (415) 981-4846
27 jkl@girardgibbs.com; ecp@girardgibbs.com

28 James Helfrich
29 GERSH & HELFRICH, LLP
30 1860 Blake Street, Suite 300
31 Denver, Colorado 80202
32 Telephone: (303) 293-2333
33 Facsimile: (303) 293-2433
34 jh@ghlawoffice.com

Wyndham's Counsel:

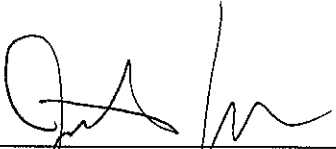
J. Kirk Quillian
A. William Loeffler
TROUTMAN SANDERS LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
Telephone: (404) 885-3000
Facsimile: (404) 885-3900
kirk.quillian@troutmansanders.com
bill.loeffler@troutmansanders.com

Stephen M. Hankins
SCHIFF HARDIN LLP
One Market, Spear Street Tower, 32nd Floor
San Francisco, California 94105
Telephone: (415) 901-8700
Facsimile: (415) 901-8701
SHankins@schiffhardin.com

1
2 IN WITNESS WHEREOF, the Parties have executed and caused this Settlement
3 Agreement to be executed by their duly authorized attorneys below.

4
5 Dated: October 21, 2010

6 BY:



Jonathan Levine
Elizabeth C. Pritzker
GIRARD GIBBS LLP
Eric H. Gibbs
Elizabeth C. Pritzker
601 California Street
San Francisco, CA 94108

11
12 James Helfrich
13 GERSH & HELFRICH, LLP
14 1860 Blake Street, Suite 300
15 Denver, Colorado 80202

16 *Attorneys for Plaintiffs and the Class*

17 Dated: October 21, 2010

18 BY:

J. Kirk Qullian
A. William Loeffler
TROUTMAN SANDERS, LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216

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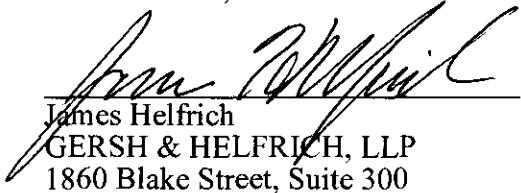
28 *Attorneys for Wyndham Resort
Development Corporation*

1
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3 Agreement to be executed by their duly authorized attorneys below.

4
5 Dated: October 21, 2010

6 BY:

Jonathan Levine
Elizabeth C. Pritzker
GIRARD GIBBS LLP
Eric H. Gibbs
Elizabeth C. Pritzker
601 California Street
San Francisco, CA 94108

10
11 
James Helfrich
12 GERSH & HELFRICH, LLP
1860 Blake Street, Suite 300
13 Denver, Colorado 80202

14 *Attorneys for Plaintiffs and the Class*

15
16 Dated: October __, 2010

17 BY:

18 J. Kirk Qullian
A. William Loeffler
19 TROUTMAN SANDERS, LLP
5200 Bank of America Plaza
20 600 Peachtree Street, N.E.
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San Francisco, California 94105
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26 *Attorneys for Wyndham Resort*
27 *Development Corporation*
28

1
2 IN WITNESS WHEREOF, the Parties have executed and caused this Settlement
3 Agreement to be executed by their duly authorized attorneys below.
4

5 Dated: October 21, 2010

6 BY:

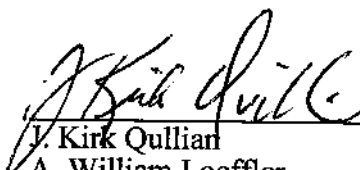
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San Francisco, CA 94108

11 James Helfrich
12 GERSH & HELFRICH, LLP
13 1860 Blake Street, Suite 300
14 Denver, Colorado 80202

Attorneys for Plaintiffs and the Class

15
16 Dated: October 21, 2010

17 BY:

18 
J. Kirk Quillian
A. William Loeffler
TROUTMAN SANDERS, LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216

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26 Telephone: (415) 901-8700
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28 *Attorneys for Wyndham Resort
Development Corporation*

EXHIBIT A

DRAFT

October 21, 2010

Chris W. Neri
Assistant Commissioner/Subdivisions
California Department of Real Estate
P.O Box 187005
2201 Broadway
Sacramento, California 95818-7005

Re: Wixon v. Wyndham Resort Development Corporation
United States District Court, Northern District of California
Docket No. C-07-02361-JSW (BZ)

Dear Mr. Neri:

Pursuant to Section 1715 of Title 28 of the United States Code (28 U.S.C. § 1715, the “Class Action Fairness Act of 2005”), this letter and its enclosures shall constitute notice of a proposed class action settlement in the above-referenced action. The action and proposed settlement involves a points-based time-share plan that may be subject to the jurisdiction of your office.

The time-share plan is commonly known as WorldMark, The Club (“WorldMark”). Wyndham Resort Development Corporation (“Wyndham”) develops resorts for WorldMark. Pursuant to a written agreement with WorldMark, Wyndham transfers legal ownership of the resort properties it develops to WorldMark and, in exchange, Wyndham has the exclusive right to market memberships in the Club and to the proceeds from the sale of membership in the Club.

The proposed settlement, if approved, will effectuate changes in the WorldMark time-share plan. Specifically, credit values required to make reservations at specified WorldMark resorts will be reduced, and Wyndham will cancel credits associated with these reductions so that they will no longer be available for sale to the public. Additionally, certain units at WorldMark resorts that do not have high overall vacation credit usage will be removed from the WorldMark resort system, and transferred back to Wyndham or its designee. Credits associated with removed units also will be cancelled so that they will no longer be available for sale to the public. Wyndham will add up to 21 units at WorldMark’s Dolphin’s Cove resort in Anaheim, California to replace an equivalent number of higher credit value units that will be removed from WorldMark’s Anaheim resort and transferred back to Wyndham or its designee. The number of units and credits remaining in the WorldMark system after the settlement is implemented will be sufficient to ensure that the number of accommodations available to WorldMark member usage will be equal to or greater than the number of vacation credits sold to the public.

In the event the settlement does not receive final court approval and final regulatory approval, the above-described changes to the WorldMark time-share plan will not occur.

The action and the proposed settlement are evidenced by the following enclosed materials:

1. Plaintiffs’ Sixth Amended Class Action (operative) Complaint on Behalf of Nationwide Settlement Class;

To: Chris W. Neri

Re: **Wixon, et al. v. Wyndham Resort Development Corp. et al.**

October 21, 2010

Page 2

2. The parties' Settlement Agreement and Release, including exhibits thereto;
3. The Proposed Order of the United States District Court for the Northern District of California Granting Preliminary Approval of Class Action Settlement, which was filed with the Court on October 21, 2010; and
4. The Summary Notice for members of WorldMark, The Club that will be posted on the WorldMark member web site and on the class counsel's web site, as directed by the court.

Also enclosed with this letter is a chart prepared by Wyndham identifying the number of class members in each State encompassed within the proposed settlement that will be provided with Notice of the Class Action Settlement, and their percentage of the Class.

If, upon review of the enclosed materials, you have any questions or concerns regarding the proposed settlement or its implementation, please contact me directly prior to [date of expiration of 90-day CAFA period] to discuss these matters.

Sincerely,

[NAME]

[TITLE]

Wyndham Resort Development Corporation

cc: J. Kirk Quillian, Troutman Sanders LLP, attorneys for Wyndham Resort Development Corp.
Jonathan K. Levine, Girard Gibbs LLP, Class Counsel for Plaintiffs and the Class

EXHIBIT B

Jonathan K. Levine (State Bar No. 220289)
jkl@girardgibbs.com
Elizabeth C. Pritzker (State Bar No. 146267)
ecp@girardgibbs.com
Todd I. Espinosa (State Bar No. 209591)
tie@girardgibbs.com
GIRARD GIBBS LLP
601 California Street, 14th Floor
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

Attorneys for Individual and Representative
Plaintiffs Clarke and Rebecca Wixon, Norman
and Barbara Wixon, Kandice Scattolon and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Clarke and Rebecca Wixon, Norman
and Barbara Wixon, and Kandice Scattolon, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Wyndham Resort Development Corp. (f/k/a
Trendwest Resorts, Inc.),

Defendant.

Case No. C 07 2361 JSW (BZ)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

CLASS ACTION

Date: December 3, 2010

Time: 9:00 a.m.

Courtroom: Hon. Jeffrey S. White

1 This matter came before the Court for hearing on December 3, 2010, on the joint application of
 2 Plaintiffs Clarke and Rebecca Wixon, Norman and Barbara Wixon and Kandice Scattolon (“Plaintiffs”)
 3 and Defendant Wyndham Resort Development Corporation (“Wyndham”) (Plaintiffs and Wyndham
 4 are referred to collectively as the “Parties”) for preliminary approval of the proposed Settlement
 5 Agreement and Release (“Settlement”), resolving the class claims asserted in the litigation against
 6 Wyndham. In their joint application, the Parties further request (i) leave for Plaintiffs to file a Sixth
 7 Amended Complaint to conform the class definition set forth in the pleadings with that contained in the
 8 proposed Settlement, (ii) preliminary certification of a settlement class, and (iii) approval of the form of
 9 Summary Notice to be electronically published to the settlement class.

10 The Court having considered all papers filed and proceedings had herein, and otherwise being
 11 fully informed in the premises and good cause appearing therefore, **IT IS HEREBY ORDERED** that:

12 1. Solely for purposes of the proposed Settlement, the Court grants Plaintiffs leave to file a
 13 Sixth Amended Complaint to conform the class definition and class allegations to the proposed
 14 Settlement, which is attached as Exhibit 1 to the Parties’ Joint Application. Wyndham is excused from
 15 filing an answer or any other responsive pleading with respect to the Sixth Amended Complaint,
 16 without prejudice to Wyndham and its right to deny allegations and otherwise respond under the
 17 Federal Rules of Civil Procedure, absent this Settlement becoming effective.

18 2. The Court previously entered an order certifying a litigation class pursuant to Fed. R.
 19 Civ. P. 23. (*See* Dkt No. 420.) For the reasons stated in the Court’s prior class certification order, the
 20 Court finds that the Parties’ proposed settlement class satisfies the prerequisites of numerosity,
 21 commonality, typicality, and adequacy of representation, and further finds that common questions
 22 predominate over any questions affecting only individual members such that resolution on a class basis
 23 is superior to other available methods for a fair resolution of this controversy. Fed. R. Civ. P. 23(a),
 24 (b). Accordingly, the Court preliminarily certifies the following class for purposes of the proposed
 25 Settlement (the “Settlement Class”):

26 All Current WorldMark, The Club members as of Preliminary Approval. Excluded from
 27 the Class are Defendants, any entity in which any Defendant has or had a controlling
 28 interest, any officers or directors of Wyndham, the legal representatives, heirs,
 successors, and assigns of Defendants, and any judge assigned to this action and his or
 her immediate family.

3. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Settlement.

4. The Court preliminarily approves the proposed Settlement, finding that its terms appear sufficiently fair, reasonable, and adequate to warrant dissemination of notice of the proposed Settlement to the Settlement Class. The Court finds that the proposed Settlement contains no obvious deficiencies and that the parties entered into the proposed Settlement in good faith, following arms-length negotiation between their respective counsel.

5. The Court hereby approves the form and procedures for disseminating a Summary Notice of Class Action Settlement (“Summary Notice”) to the Settlement Class set forth in the proposed Settlement. Within ten (10) business days after entry of this Order: (a) Wyndham shall cause the Summary Notice to be posted in a clear and prominent manner in a location accessible only to WorldMark members on the WorldMark by Wyndham website (www.worldmarktheclub.com); and (b) Plaintiffs’ counsel shall cause the Summary Notice to be posted in a clear and prominent manner on the Girard Gibbs LLP firm website (www.girardgibbs.com). The Summary Notice shall remain on these websites until formal settlement notice is issued to the Settlement Class or until such other date as the Court may order.

6. Wyndham shall comply with the requirements of 28 U.S.C. § 1715(b) and timely serve notice of the proposed Settlement upon the appropriate federal official and the appropriate State official of each State in which a Settlement Class member resides. Wyndham shall also provide copies of its submissions to Plaintiffs’ counsel.

7. On or before _____, 2011, the Parties shall submit a report to the Court advising of: (i) the WorldMark Board’s consent to the Settlement; and (ii) the status of the Parties’ efforts to obtain Regulatory Approval to implement the terms of the Settlement. If, at that time, Wyndham attests that Regulatory Approval is, in Wyndham’s estimate, likely to be attained, the Parties may propose a timeline and procedure for providing formal settlement notice to the Settlement Class, and propose a hearing and schedule for final settlement approval by the Court.

//

//

8. A further status conference shall be held on _____, 2011.

IT IS SO ORDERED.

Dated: _____, 2010

Honorable Jeffrey S. White
United States District Judge

EXHIBIT C

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Clarke and Rebecca Wixon et al. v. Wyndham Resort
Development Corp.

Case No. C 07-02361 JSW (BZ)

**SUMMARY NOTICE OF CLASS ACTION
SETTLEMENT**

TO: OWNERS OF WORLDMARK, THE CLUB
THIS SUMMARY NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION
LAWSUIT AGAINST WYNDHAM RESORT DEVELOPMENT CORP. PLEASE READ THIS NOTICE
CAREFULLY. IT CONTAINS IMPORTANT INFORMATION.

1. **PURPOSE OF THIS SUMMARY NOTICE.** This notice is being provided at the direction of the United States District Court, Northern District of California ("Court") to inform you about a proposed settlement ("Settlement") of litigation involving Wyndham Resort Development Corp. ("Wyndham") and WorldMark, The Club ("WorldMark"). If approved by the Court, the Settlement will fully, finally and forever resolve the litigation against Wyndham on the terms and conditions summarized in this notice.

The Court has not yet set a date for a hearing to approve the Settlement ("Approval Hearing"). When the Court does set the date for the Approval Hearing, the parties will mail a formal Notice of Class Action Settlement to all WorldMark owners that will advise owners of the date of the Approval Hearing and of their rights to comment on any provision of the Settlement, to appear at the Approval Hearing, or to exclude themselves from the Settlement.
2. **LITIGATION OVERVIEW.** In 2007, four WorldMark owners ("Plaintiffs") filed a class action lawsuit, U.S. District Court Case No. C-07-02361 JSW (BZ), on behalf of certain WorldMark owners against Wyndham, alleging that Wyndham, as the developer and manager for the WorldMark resorts, engaged in certain acts that violate the WorldMark governing documents and California law. Among other things, the lawsuit challenged the setting of credit values by Wyndham at 12 WorldMark resorts, Wyndham's implementation of TravelShare and Fun Time reservations, the reduction in the number of weeks set aside and not sold at new WorldMark resorts, and Wyndham's use of WorldMark resorts for sales and marketing purposes. Wyndham contests and denies the alleged claims.
3. **THERE HAS BEEN NO FINDING OF WRONGDOING OR LITIGATION SUCCESS.** The Court has not decided the merits of the claims or defenses in the litigation. This notice does not, and is not intended to, imply that there have been or would be any findings of violation of law by Wyndham. Wyndham denies all liability or wrongdoing alleged in the litigation. It believes the Settlement is desirable to avoid the substantial expense, burden, risk, distraction, and uncertainty of protracted litigation. All parties believe the Settlement confers substantial benefits and is in the best interests of WorldMark and WorldMark owners.
4. **THE SETTLEMENT.** The terms and conditions of the proposed Settlement are set forth in the parties' Settlement Agreement and Release, which has been filed with the Court. The Settlement, if approved, will lower credit values at certain resorts, cancel certain Vacation Credits held by Wyndham as unsold developer credits, remove underutilized units from the WorldMark system, and make other changes to the WorldMark time-share plan that may require consent of the WorldMark Board and approval from various regulatory authorities. Wyndham has notified regulatory authorities of the settlement, and will periodically report to Class Counsel regarding the status of efforts to obtain regulatory approval. The following description of the terms of the proposed Settlement is a summary only:
 - A. ***Credit Cancellation and Reduction of Credit Values at Certain Resort.*** If the Settlement is approved, and once the Settlement is effective, Wyndham will cancel 22 million WorldMark Vacation Credits that it currently holds as unsold developer credits. Cancelled Vacation Credits will no longer be available for sale, will not be sold, and cannot be used in connection with voting in any WorldMark election. The 22 million cancelled Vacation Credits will be allocated to reduce peak "red season" credit values in certain categories of units at certain of the resorts at issue in the lawsuit, as follows:

Resorts Selected for Red Season Credit Value Reductions	Unit Type	Number of Units	Number of Season Weeks	Old Red Season Credit Value	New Reduced Red Season Credit Value	Credits Canceled To Permit Credit Reductions
Anaheim	Studio	10	50	11,000	10,500	6,400,000
	1 bd	62	50	14,000	13,000	
	2 bd	122	50	16,500	16,000	
Camlin	1 bd	57	31	12,000	11,500	883,500
Las Vegas – Tropicana	2 bd	36	50	13,000	12,500	2,100,000
	2 bd dlx	48	50	15,000	14,500	
Long Beach - Washington	2 bd	59	33	13,500	13,000	1,023,000
	3 bd	3	33	15,500	15,000	
Mission Valley	1 bd	55	50	12,500	11,500	2,750,000
New Orleans	1 bd	22	38	12,000	11,500	418,000
San Diego	Studio H	49	50	12,000	11,000	3,875,000
	1 bd	19	50	15,000	13,500	
San Francisco	Studio H	40	40	9,000	8,500	1,740,000
	1 bd	47	40	12,000	11,500	
Santa Fe	Hotel	1	36	9,000	8,500	1,494,000
	C-Studio	10	36	12,000	10,500	
	1 bd-c	5	36	13,000	12,000	
	1 bd	14	36	14,000	12,500	
Taos	Studio	15	36	11,000	10,500	540,000
	Studio-dlx	4	36	12,000	11,500	
	1 bd	9	36	13,000	12,500	
	2 bd	2	36	15,000	14,500	
W Yellowstone	2 bd	67	20	13,500	13,000	870,000
	3 bd	10	20	15,500	14,500	
TOTAL						22,093,500

As a result of this Settlement term, Wyndham's rights and obligations as to the 22 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated. Within 15 days of the Settlement's Effective Date, or as soon as practicable thereafter, the WorldMark reservation system will be modified, and the new lower credit red season values at the affected resorts reflected above will be in place for stays at these resorts, so that members have the benefit of the new, lower credit values when they book reservations or stay at these resorts.

- B. *Extraction of Underutilized Units and Cancellation of Related Credits.*** If the Settlement is approved, between 400 and 481 units at certain underutilized WorldMark resorts will be returned to Wyndham. Underutilized units include only units at resorts with overall Vacation Credit occupancy rates below WorldMark's 85% average rate. This provision of the Settlement "right-sizes" the resorts by eliminating units that WorldMark members underutilize and relieving WorldMark of the expense and ongoing burden of maintaining units that are being underutilized. The specific resorts and number of units being removed at each such resort are identified below (assuming all 481 units are removed):

Resorts Selected for Extraction	Number of Credits Cancelled	Number of Units Removed
Angels Camp	19,780,000	44
Bisontown	8,460,000	18
Canmore	13,824,000	31
Denarau Island	12,688,000	22
Galena	10,568,000	31
Grand Lake	13,968,000	32
Indio	59,384,000	113
Lake of the Ozarks	11,664,000	24
Las Vegas Tropicana	36,504,000	56
Pinetop	9,304,000	23
Rancho Vistoso	10,828,000	23
Steamboat Springs	18,008,000	27
Taos	20,652,000	37
TOTAL	245,632,000	481

If the Settlement is approved, within 12 months of the Settlement's Effective Date, Wyndham will seek regulatory approval to transfer out of WorldMark a minimum of 400 and up to a maximum of the 481 units identified above or, with the consent of Class Counsel and the WorldMark Board, and with Court approval, certain substitute units (subject to the overall 481 unit maximum) that meet the criteria used to identify the units listed above. Wyndham will complete the transfer of at least 400 units (the "First Transfer Phase") as soon as practicable upon obtaining regulatory approval. If more time is needed to obtain regulatory approval to complete the First Transfer Phase, Wyndham may, depending upon the amount of time required, seek the consent of Class Counsel or a Court order for additional time to complete the First Transfer Phase. After the First Transfer Phase is complete, Wyndham will cancel the Vacation Credits associated with these underutilized units from its pool of unsold developer credits.

When the First Transfer Phase is complete, Wyndham will promptly notify the Court and Class Counsel. At that time, to the extent that Wyndham has not reached the 481 unit maximum or the 245.6 million cap on Vacation Credits, Wyndham may either (i) continue to attempt to obtain the authority to legally transfer the remaining 81 units or such number of substitute units that meet the criteria used to select the original specified units (the "Additional Transfer Phase"); or (ii) declare that this term of the Settlement has been finally and fully performed. After the Settlement's Effective Date, Wyndham has the right to void the Settlement if and only if, after exhausting all commercially reasonable efforts, Wyndham is unable to obtain regulatory approval to legally and effectively transfer out of WorldMark a minimum of 400 units as provided for under this term of the Settlement.

If all 481 units are removed, Wyndham will cancel the 245.6 million Vacation Credits associated with these underutilized units from its pool of unsold developer credits. The 245.6 million cancelled Vacation Credits will no longer be available for sale, will not be sold, and cannot be used in connection with voting in any WorldMark election. As a result of this Settlement term, Wyndham's rights and obligations as to the 245.6 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated. If fewer units are

removed, the corresponding number of Vacation Credits to be cancelled will be reduced accordingly. Based on a thorough review of occupancy and credit usage data, Plaintiffs and Wyndham agree that extraction of the units will not materially impair availability at the resorts identified above.

- C. *Exchange of Certain Units in Anaheim to Provide More Availability at Lower Credit Values.*** If the Settlement is approved, upon completion of the First Transfer Phase described above, 21 units at WorldMark Anaheim will be returned to Wyndham. These 21 units at WorldMark Anaheim will be replaced by weeks equivalent to 21 units at WorldMark's Dolphin's Cove Resort (also in Anaheim), which has lower credit values. Wyndham will cancel 7 million Vacation Credits associated with this exchange (16.9 million from WorldMark Anaheim less 9.9 million for WorldMark Dolphin's Cove) from its pool of unsold developer credits, as follows.

Resorts Selected for Exchange	Number of Credits	Number of Units
Anaheim - REMOVED	(16,874,000) Cancelled	(21) Removed
Dolphin's Cove - ADDED	+ 9,860,000 Added	+ 21 Added
NET CHANGE	(7,014,000) Cancelled	-0-

The 7 million cancelled Vacation Credits will no longer be available for sale, will not be sold, and cannot be used in connection with voting in any WorldMark election. As a result of this Settlement term, Wyndham's rights and obligations as to the 7 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated.

- D. *Aggregate Changes in Credits and Units and Reserves.*** If the Settlement is approved and implemented, the maximum net reduction in the number of Vacation Credits held by Wyndham for sale as WorldMark Vacation Credits will be 274.7 million, calculated as follows: 22 million cancelled + 262.5 million extracted – 9.86 million added at WorldMark Dolphin's Cove. As a result of the Settlement, Wyndham's rights and obligations as to the 274.7 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated. WorldMark owners would be relieved of maintenance and other costs associated with the extracted units, and the number of credits available to compete for reservations at WorldMark resorts will be reduced, while ensuring that the number of units remaining after extraction will be sufficient to meet owner demand.

At the time units are transferred out of WorldMark, exterior reserves maintained for future refurbishment and repair at resorts where units are being returned to Wyndham will be transferred to, and held by, an independent association or governing body responsible for exterior maintenance at the resort. Interior reserves maintained for future refurbishment and repair of the units returned to Wyndham will be deposited with an escrow agent.

- E. *Cessation of Sales of TravelShare with Fun Time.*** If the Settlement is approved, Wyndham will cease selling new TravelShare memberships with Fun Time on the later of October 31, 2011 or 90 days after the Settlement's Effective Date. WorldMark owners who join TravelShare prior to that date will not be affected by this aspect of the Settlement.
- F. *Election Website.*** If the Settlement is approved, Wyndham will establish a separate internet website for owners to access during election cycles for the purpose of, and with content pertaining to, WorldMark Board of Director election matters, subject to reasonable review and approval of any owner postings by the WorldMark Board or the Board's authorized designee. Wyndham will notify WorldMark owners of the website's existence each election cycle via Destinations Magazine and the Insider Magazine.
- G. *Limitations of Party Weekends.*** If the Settlement is approved, Wyndham will not be able to book Party Weekends at any specific WorldMark resort during any particular calendar month in which the occupancy at the resort has exceeded 90% based on occupancy data from the same month in the preceding calendar year.
- H. *Release of Claims.*** If the Settlement is approved, all WorldMark owners as of December __ 2010 who do not exclude themselves from the Settlement will release all claims that have been or could have been alleged in the

litigation or that arise out of, are connected with, or are related to the claims asserted in the litigation, including any unknown claims against Wyndham. Wyndham will similarly release all such claims against Plaintiffs and Plaintiffs' Counsel. For a fuller description of the claims being released, please see paragraphs VII.B.1-B.2 of the Settlement Agreement and Release, which is posted at www.GirardGibbs.com/Wyndham-Settlement.asp.

- I. Dismissal of Pending Litigation; Required Action if Settlement is Voided.** If the Settlement is approved, the class action lawsuit will be dismissed, with prejudice, subject to the continuing jurisdiction of this Court. The Wixon plaintiffs also will dismiss with prejudice their complaint in intervention filed in the California state litigation involving a dispute as to the distribution of the owner register and owner email addresses, *WorldMark v. Miller*, Sacramento County Superior Court Case No. 34-2008-00025130-CU-PT-GDS.

After the Settlement's Effective Date, Wyndham has the right to void the Settlement if and only if, after exhausting all commercially reasonable efforts, Wyndham is unable to obtain regulatory approval to extract and transfer out of WorldMark a minimum of 400 units as provided for under the extraction provision of the Settlement. If Wyndham exercises this right, the Parties will, within ten (10) business days thereafter, request a Court order that: (i) the judgment and dismissal of the Action be vacated; (ii) Plaintiffs' Fifth Amended Class Action Complaint and Wyndham's Answer thereto be reinstated as the operative pleadings and the record be reinstated; (iii) the Parties shall be restored to their respective positions in the litigation as of July 2, 2010; (iv) all Settlement Class members shall be restored to their respective positions as of July 2, 2010; and (v) notice to the settlement class shall be provided, if deemed necessary, by the Court at Wyndham's expense.

- 5. PLAINTIFFS' COUNSEL'S FEE AND EXPENSE APPLICATION.** Plaintiffs and the Class have been represented by Girard Gibbs LLP, a law firm in San Francisco, California. Girard Gibbs has been assisted by Gersh & Helfrich LLP, a Denver, Colorado law firm. To date, Plaintiffs' Counsel have not been compensated for any of their work or reimbursed for any of the significant expenses incurred in the litigation. Wyndham has agreed, subject to Court approval, to pay a fee award up to \$5 million to compensate Plaintiffs' Counsel for the work they have performed for the Class, the litigation expenses incurred (including experts), and the costs associated with the notice and administration of the Settlement, together with any amounts paid to Plaintiffs as incentive awards. This award will be deposited into an escrow account, and dispensed to Plaintiffs' counsel in two phases as the Parties fulfill their obligations under the Settlement. Also subject to Court approval, each named Plaintiff will receive a \$5,000 incentive award to be paid out of any fee award to Plaintiffs' Counsel. Neither Plaintiffs, WorldMark, nor the Class will be responsible for the payment of any of Plaintiffs' Counsel's fees or expenses or the incentive awards. In addition, the Settlement described above is not contingent upon the Court's award of fees or expenses to Plaintiffs' Counsel or the incentive awards to the named Plaintiffs.

Plaintiffs' Counsel's fee and expense application, including the incentive awards, are subject to Court approval. If you wish to comment on the fee and expense application before the Court considers it, the Notice of Class Action Settlement will explain how and when to submit comments.

- 6. MORE INFORMATION.** This notice only summarizes the lawsuit and the Settlement. For more details, you may review the Settlement Agreement and Release, available online in Adobe Portable Document Format (pdf) at www.GirardGibbs.com/Wyndham-Settlement.asp. The Settlement Agreement and all other pleadings and papers filed in the lawsuit are available for inspection and copying during regular business hours at the office of the Clerk of the Court, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102.

If you would like more information about the Settlement, you may contact Plaintiffs' counsel, Girard Gibbs LLP, 601 California Street, Suite 1400, San Francisco, CA 94108; telephone number (415) 981-4800; or by email to Wyndham-Settlement@GirardGibbs.com.

PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THE SETTLEMENT.

DATED: _____, 2010

**BY ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

EXHIBIT D

EXHIBIT D**Reduction of Credit Values and Cancellation of Credits**

Resorts Selected for Red Season Credit Value Reductions	Unit Type	Number of Units	Number of Season Weeks	Old Red Season Credit Value	New Reduced Red Season Credit Value	Credits Canceled To Permit Credit Reductions
Anaheim	Studio	10	50	11,000	10,500	
	1 bd	62	50	14,000	13,000	
	2 bd	122	50	16,500	16,000	6,400,000
Camlin	1 bd	57	31	12,000	11,500	883,500
Las Vegas – Tropicana	2 bd	36	50	13,000	12,500	
	2 bd dlx	48	50	15,000	14,500	2,100,000
Long Beach - Washington	2 bd	59	33	13,500	13,000	
	3 bd	3	33	15,500	15,000	1,023,000
Mission Valley	1 bd	55	50	12,500	11,500	2,750,000
New Orleans	1 bd	22	38	12,000	11,500	418,000
San Diego	Studio H	49	50	12,000	11,000	
	1 bd	19	50	15,000	13,500	3,875,000
San Francisco	Studio H	40	40	9,000	8,500	
	1 bd	47	40	12,000	11,500	1,740,000
Santa Fe	Hotel	1	36	9,000	8,500	
	C-Studio	10	36	12,000	10,500	
	1 bd-c	5	36	13,000	12,000	
	1 bd	14	36	14,000	12,500	1,494,000
Taos	Studio	15	36	11,000	10,500	
	Studio-dlx	4	36	12,000	11,500	
	1 bd	9	36	13,000	12,500	
	2 bd	2	36	15,000	14,500	540,000
W Yellowstone	2 bd	67	20	13,500	13,000	
	3 bd	10	20	15,500	14,500	870,000
				TOTAL		22,093,500

EXHIBIT E

EXHIBIT E**Extraction of Units and Credits**

Resort	Number of Credits Cancelled	Number of Units Removed
Angels Camp	19,780,000	44
Bisontown	8,460,000	18
Canmore	13,824,000	31
Denarau Island	12,688,000	22
Galena	10,568,000	31
Grand Lake	13,968,000	32
Indio	59,384,000	113
Lake of the Ozarks	11,664,000	24
Las Vegas Tropicana	36,504,000	56
Pinetop	9,304,000	23
Rancho Vistoso	10,828,000	23
Steamboat Springs	18,008,000	27
Taos	20,652,000	37
TOTAL	245,632,000	481

Exchange of Units in Anaheim, CA

Resort	Number of Credits	Number of Units
Anaheim - REMOVED	(16,874,000) Cancelled	(21) Removed
Dolphin's Cove - ADDED	+ 9,860,000 Added	+ 21 Added
NET CHANGE	(7,014,000) Cancelled	-0-